

Agenda for Development Management Committee

Tuesday, 6 March 2018; 10:00am



[Members of the Committee](#)

Venue: Council Chamber, Exmouth Town Hall, Exmouth,
EX8 1AW

[View directions](#)

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[Speaking on planning applications](#)

In order to speak on an application being considered by the Development Management Committee you must have submitted written comments during the consultation stage of the application. Those that have commented on an application being considered by the Committee will receive a letter or email (approximately 9 working days before the meeting) detailing the date and time of the meeting and instructions on how to register to speak. The letter/email will have a reference number, which you will need to provide in order to register. Speakers will have 3 minutes to make their representation. **Please note there is no longer the ability to register to speak on the day of the meeting.**

The number of people that can speak on each application is limited to:

- Major applications – parish/town council representative, 5 supporters, 5 objectors and the applicant or agent
- Minor/Other applications – parish/town council representative, 2 supporters, 2 objectors and the applicant or agent

The day before the meeting a revised running order for the applications being considered by the Committee will be posted on the council's website (<http://eastdevon.gov.uk/council-and-democracy/committees-and-meetings/development-management-committee/development-management-committee-agendas>). Applications with registered speakers will be taken first.

Parish and town council representatives wishing to speak on an application are also required to pre-register in advance of the meeting. One representative can be registered to speak on behalf of the Council from 10am on Monday 26 February up until 12 noon on Thursday 1 March by leaving a message on 01395 517525 or emailing planningpublicspeaking@eastdevon.gov.uk.

Speaking on non-planning application items

A maximum of two speakers from the public are allowed to speak on agenda items that are not planning applications on which the Committee is making a decision (items on which you can register to speak will be highlighted on the agenda). Speakers will have 3 minutes to make their representation. You can register to speak on these items up until 12 noon, 3 working days before the meeting by emailing planningpublicspeaking@eastdevon.gov.uk or by phoning 01395 517525. A member of the Democratic Services Team will only contact you if your request to speak has been successful.

- 1 Minutes of the Development Management Committee meeting held on 6 February 2018 (page 4-7)
- 2 Apologies
- 3 Declarations of interest - Guidance is available online to Councillors and co-opted members on making [declarations of interest](#).
- 4 [Matters of urgency](#)
- 5 To agree any items to be dealt with after the public (including press) have been excluded. There are no items that officers recommend should be dealt with in this way.

- 6 **Planning appeal statistics** (page 8-12)
Development Manager

- 7 **Applications for determination**
Please note the following applications are all scheduled to be considered in the morning, however the order may change – please see the front of the agenda for when the revised order will be published.

17/2944/FUL (Other) (Page 13-28)

Exmouth Littleham

Land at Queens Drive (East Of Ocean Building), Exmouth, EX8 2AY

17/2948/FUL (Other) (Page 29-37)

Exmouth Town

Beach Gardens, Exmouth

Break

(Refreshments will be provided for Development Management Committee members)

Afternoon Session – the items applications below will not be considered before 12pm.

Please note the following applications are all scheduled to be considered in the afternoon, however the order may change – please see the front of the agenda for when the revised order will be published.

17/2796/FUL (Minor) (Page 38-48)

Clyst Valley

Highlands, Clyst St Mary, Exeter, EX5 1AS

17/2647/RES (Minor) (Page 49-66)

Raleigh

Hayes House, Behind Hayes, Otterton, Budleigh Salterton, EX9 7JQ

17/2520/VAR (Major) (Page 67-75)

Honiton St Michaels

Exeter Road, Honiton, EX14 1AZ

18/0359/V106 (Major) (Page 76-84)

Feniton and Buckerell

Land Adjacent Hayne Farm, Hayne Lane, Gittisham

Please note:

Planning application details, including plans and representations received, can be viewed in full on the Council's [website](#).

This meeting is being audio recorded by EDDC for subsequent publication on the Council's website.

Under the Openness of Local Government Bodies Regulations 2014, members of the public are now allowed to take photographs, film and audio record the proceedings and report on all public meetings (including on social media). No prior notification is needed but it would be helpful if you could let the democratic services team know you plan to film or record so that any necessary arrangements can be made to provide reasonable facilities for you to report on meetings. This permission does not extend to private meetings or parts of meetings which are not open to the public. You should take all recording and photography equipment with you if a public meeting moves into a session which is not open to the public.

If you are recording the meeting, you are asked to act in a reasonable manner and not disrupt the conduct of meetings for example by using intrusive lighting, flash photography or asking people to repeat statements for the benefit of the recording. You may not make an oral commentary during the meeting. The Chairman has the power to control public recording and/or reporting so it does not disrupt the meeting.

[Decision making and equalities](#)

For a copy of this agenda in large print, please contact the Democratic Services Team on 01395 517546

EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Development Management Committee held at Knowle, Sidmouth on 6 February 2018

Attendance list at end of document

The meeting started at 10am and ended at 11.58am

***37 Minutes**

The minutes of the Development Management Committee meeting held on 9 January 2018 were confirmed and signed as a true record.

***38 Declarations of interest**

Cllr Paul Carter; 17/2318/FUL; Personal interest; acquaintance of the landowner

Cllr Mike Howe; 17/2318/FUL; Personal interest; acquaintance of the landowner

In accordance with the code of good practice for Councillors and Officers dealing with planning matters as set out in the Constitution, Cllr Mike Howe advised that he was the Ward Member in respect of application 17/2318/FUL so the Vice Chairman chaired the item.

***39 Appeal statistics**

The Committee received and noted the report written by the Development Manager setting out appeals recently lodged and outlining the four decisions notified which – one had been dismissed and three had been allowed.

The Service Lead for Planning Strategy and Development Management drew Members' attention to the Council Offices, Knowle planning appeal which had been allowed. The development will have a C2 use class and as a result will not lead to a requirement for affordable housing or payment of CIL. The Inspector considered that the overall scale, mass and height of the proposed development would not appear excessive or overbearing and would not harm the character appearance of the area or the setting of the listed summerhouse.

***40 Applications for Planning Permission and matters for determination**

RESOLVED:

that the applications before the Committee be determined as set out in Schedule 9 2017/2018.

Attendance list

Present:

Committee Members present for all or part of the meeting

Councillors

Mike Howe (Chairman)

Colin Brown (Vice Chairman)

David Barratt

Susie Bond

Helen Parr

Paul Carter

Bruce de Saram

David Key

Brain Bailey

Steve Gazzard
Mark Williamson

Officers present for all or part of the meeting

Ed Freeman, Service lead - Planning Strategy and Development Management
Henry Gordon Lennox, Strategic Lead – Governance and Licensing
Jeremy Ebdon, Principal Planning Officer (East)
Gavin Spiller, Principal Planning Officer (West)
Amanda Coombes, Democratic Services Officer
Tabitha Whitcombe, Democratic Services Officer

Also present for all or part of the meeting

Councillors:

Andrew Moulding
Rob Longhurst

Apologies:

Committee Members

Councillors

Alan Dent
Matt Coppell
Ben Ingham
Mike Allen
Peter Burrows

Chairman Date.....

EAST DEVON DISTRICT COUNCIL
Development Management Committee
Tuesday 6 February 2018; Schedule number 9 – 2017/2018

Applications determined by the Committee

Committee reports, including recommendations, can be viewed at:
<http://eastdevon.gov.uk/media/2353314/060218combineddmagenda.pdf>

Axminster Town
(AXMINSTER)

17/2870/FUL

Applicant: Mr N Cadwell

Location: 4 Coles Lane, Axminster

Proposal: Subdivision of existing four bedroom house into 2 no. self contained dwelling houses.

RESOLVED: APPROVED (contrary to officer recommendation) with delegated authority given to the Development Manager to impose appropriate conditions.

Clyst Valley
(FARRINGDON)

17/2318/FUL

Applicant: UK Energy Reserve Limited

Location: Land East Of Hill Barton Business Park, Farringdon

Proposal: Installation of 10 containerised units for the storage of electricity, and associated infrastructure including a highway access, and a 2.4 metre high boundary fence.

RESOLVED: APPROVED as per recommendation.

Otterhead
(LUPPITT)

17/2466/FUL

Applicant: Mr & Mrs Summers

Location: Barn To The South West Of Windsor Farm, Luppitt, Honiton
EX14 4SY

Proposal: Change of use of barn to dwelling.

RESOLVED: APPROVED (contrary to officer recommendation) with delegated authority given to the Development Manager to impose appropriate conditions.

Woodbury And
Lympstone
(WOODBURY)

16/1249/OUT

Applicant: Mrs Evernnett, K D Homes

Location: Land Adjacent To Trederwen, Town Lane, Woodbury

Proposal: Outline application with all matters reserved for the
construction of 5 no dwellings.

RESOLVED: APPROVED as per officer recommendation subject to ensuring that
it would not be possible to implement permission 14/1380/MOUT as
well.

**East Devon District Council
List of Planning Appeals Lodged**

Ref: 17/2467/FUL **Date Received** 18.01.2018
Appellant: Mr I Holland
Appeal Site: Upmead Kersbrook Budleigh Salterton EX9 7AA
Proposal: Construction of detached dwelling house, detached garage
and package treatment plant.
Planning APP/U1105/W/18/3193940
Inspectorate
Ref:

Ref: 17/1986/FUL **Date Received** 19.01.2018
Appellant: Mr & Mrs Rob And Laura Aubry
Appeal Site: 89 Hulham Road Exmouth EX8 4RD
Proposal: Construction of two storey side extension and single storey
rear extension.
Planning APP/U1105/D/18/3194059
Inspectorate
Ref:

Ref: 17/2022/FUL **Date Received** 22.01.2018
Appellant: Mr & Mrs Norman Mason
Appeal Site: Land Adjacent To Aquarius Plymtree Cullompton EX15 2JS
Proposal: Erection of a detached dwelling
Planning APP/U1105/W/18/3194093
Inspectorate
Ref:

Ref: 17/2168/FUL **Date Received** 23.01.2018
Appellant: Ms Hilary Naylor
Appeal Site: 16 Salters Meadow Sidmouth EX10 9BL
Proposal: Construction of two storey rear extension, front parking area,
changes to front porch, change of first floor bathroom to
bedroom and alterations to windows.
Planning APP/U1105/D/18/3194184
Inspectorate
Ref:

Ref: 17/2411/FUL **Date Received** 26.01.2018
Appellant: Mr And Mrs Davey
Appeal Site: 11 Coastguard Road Budleigh Salterton EX9 6NU
Proposal: Proposed new house and garage with carport in rear garden.
Planning APP/U1105/W/18/3194514
Inspectorate
Ref:

Ref: 17/2506/VAR **Date Received** 02.02.2018
Appellant: Mrs Reed
Appeal Site: The Willows And The Beeches Appledore Farm Farway
Colyton EX24 6EH
Proposal: Variation of condition 3 of planning consent 99/P1851 to
facilitate the unrestricted occupation of "Barn A" as a dwelling
house
Planning APP/U1105/W/18/3195007
Inspectorate
Ref:

Ref: 17/2321/FUL **Date Received** 07.02.2018
Appellant: Miss Lisa Southwell
Appeal Site: 1 Elim Close Peaslands Road Sidmouth EX10 9BG
Proposal: Single storey extension
Planning APP/U1105/D/18/3195437
Inspectorate
Ref:

Ref: 17/1149/FUL **Date Received** 12.02.2018
Appellant: Mr B Griffiths
Appeal Site: 12 Stevenstone Road Exmouth EX8 2EP
Proposal: Construction of detached dwelling (amended proposal)
Planning APP/U1105/W/18/3195733
Inspectorate
Ref:

East Devon District Council
List of Planning Appeals Decided

Ref: 17/1047/TRE **Appeal Ref:** 17/00080/TRE
Appellant: Mr S Retter-Hyde
Appeal Site: Broad Oak Lodge Ford Lane West Hill Ottery St Mary EX11 1XE
Proposal: TG1: Fell 10 trees.
Decision: **Appeal Dismissed** **Date:** 25.01.2018
Procedure: Written representations
Remarks: Delegated refusal, amenity reasons upheld.
BVPI 204: **No**
Planning Inspectorate Ref: APP/TPO/U1105/6288

Ref: 16/1052/V106 **Appeal Ref:** 17/00008/REF
Appellant: RS Homes (Devon) Ltd
Appeal Site: Land At Yaffles Coly Road Colyton
Proposal: Variation of requirement for affordable housing in Section 106 agreement pursuant to application 13/1401/MOUT
Decision: **Appeal Withdrawn** **Date:** 05.02.2018
Procedure:
Remarks:
BVPI 204: **No**
Planning Inspectorate Ref: APP/U1105/S/16/3167178

Ref: 17/1369/FUL **Appeal Ref:** 17/00058/REF
Appellant: Mrs J Wannacott
Appeal Site: Land Adjacent 2 Langstone Drive Exmouth EX8 4HU
Proposal: Construction of attached dwelling
Decision: **Appeal Dismissed** **Date:** 08.02.2018
Procedure: Written representations
Remarks: Delegated refusal, amenity reasons upheld (EDLP Strategy 6 and Policy D1).
BVPI 204: **Yes**
Planning Inspectorate Ref: APP/U1105/W/17/3185738

Ref: 17/1864/TRE **Appeal Ref:** 17/00081/TRE
Appellant: Mr F Owen
Appeal Site: 5 Potters Stile Dunkeswell Honiton EX14 4XA
Proposal: T4 Beech: Remove from boundary bank.
Decision: **Appeal Dismissed** **Date:** 08.02.2018
Procedure: Written representations
Remarks: Delegated refusal, amenity reasons upheld.
BVPI 204: **No**
Planning Inspectorate Ref: APP/TPO/U1105/6452

Ref: 17/0523/OUT **Appeal Ref:** 17/00053/REF
Appellant: Stuart Partners Ltd
Appeal Site: Land At The Gap Lower Broad Oak Road West Hill Ottery St Mary EX11 1UD
Proposal: Outline application for up to two dwellings with associated access (details of layout, scale, appearance and landscaping reserved).
Decision: **Appeal Allowed (with conditions)** **Date:** 13.02.2018
Procedure: Written representation
Remarks: Officer recommendation to refuse, Committee refusal. Countryside protection and highway safety reasons overruled (EDLP Strategies 7 & 46 and Policies D1, D3 & TC2 and Design principle D3 of the West Hill Village Design Statement).

The appeal site is outside of the built up area boundary as shown in the emerging East Devon Villages Plan. The plan has been subject to Examination and the Main Modifications, which are currently the subject of public consultation, propose no changes to the boundary for West Hill.

The Inspector acknowledged that the Villages Plan must therefore be afforded considerable weight, however, as it has not yet been found sound, it cannot carry the same weight as the Local Plan.

He considered that In the absence of an adopted boundary, the site should be assessed against the three primary functions of BUABs set out at LP paragraph 6.20. The site offers reasonable access to village services and facilities, which are around a 500 metre walk away along village lanes that are largely level with limited volumes of traffic and vehicle speeds. Therefore, its location would promote sustainable development.

The Inspector concluded that that the proposal would not result in the outward expansion of the village or unregulated development in the countryside. Consequently, it would not undermine the primary functions of the BUAB and it would not cause unacceptable harm to the character and appearance of the area.

Having regard to highway safety, the Inspector concluded that the reduced level of visibility from the access over the HA requirement would still afford all drivers reasonable advanced warning of approaching vehicles and would not result in a significant increase in the risk of accidents. Therefore, the proposal would provide a safe and suitable means of access to the site. As a result, the proposal would accord with LP Policy TC7, as the access and traffic generated by the development would not be detrimental to the safe and satisfactory operation of the local highway network.

BVPI 204:
Planning
Inspectorate
Ref:

Yes
APP/U1105/W/17/3183352

Ward Exmouth Littleham

Reference 17/2944/FUL

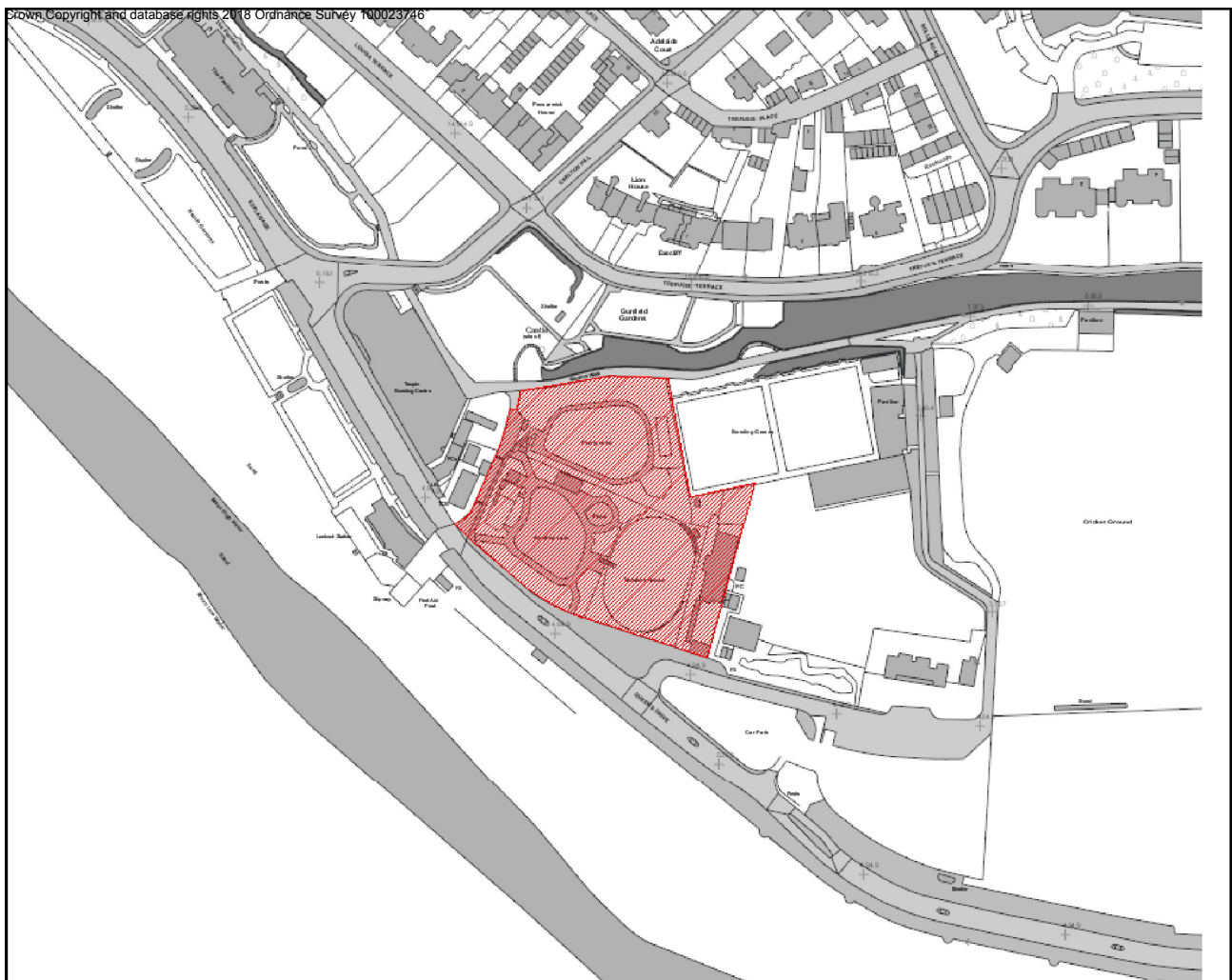
Applicant Ms Alison Hayward

Location Land At Queens Drive (East Of Ocean Building) Exmouth EX8 2AY

Proposal Temporary use of land, buildings and structures for a twelve month period for the purposes of entertainment, recreation and leisure to also include the permanent infilling of existing boating ponds plus all associated infrastructure and development



RECOMMENDATION: Temporary Approval



		Committee Date: 6th March 2018
Exmouth Littleham (EXMOUTH)	17/2944/FUL	Target Date: 05.02.2018
Applicant:	Ms Alison Hayward (EDDC)	
Location:	Land At Queens Drive (East Of Ocean Building) Exmouth	
Proposal:	Temporary use of land, buildings and structures for a twelve month period for the purposes of entertainment, recreation and leisure to also include the permanent infilling of existing boating ponds plus all associated infrastructure and development	

RECOMMENDATION: Temporary Approval

EXECUTIVE SUMMARY

This application is before members as East Devon District Council is the applicant, concerns have been raised by a Ward Member and there are objections to the application.

Temporary permission is sought for use of the former recreation area to three main activities – a food and drink area which would form an outside bar and seating area with temporary retail/catering stalls, a childrens play area with associated equipment and an events space that would host a number of outside events organised by a dedicated events manager. The existing boating ponds on site would be filled.

The site lies within the built up area boundary of Exmouth, where there has been a long and established history of recreational activities taking place. This area forms part of a wider regeneration area identified in Strategy 22 of the Local Plan as a regeneration area and has been the subject of previous applications and public consultations seeking to secure long term uses. The final design of this part of the regeneration area has yet to be formalised or indeed even consulted upon, however, as an interim measure the land owner is seeking to secure continued recreational use using temporary uses and structures together with other complementary uses.

The East Devon Local Plan supports the provision of tourist and visitor attractions under Policy E20 subject to a number of criteria.

The impact on heritage assets, the character and appearance of the area, residential amenity, highway safety and ecology is considered to be acceptable subject to appropriately worded conditions.

In relation to the infill of the boating ponds, whilst they are inherent to the historic use of the land as a recreational ground, these could if necessary be reinstated in the future and will be a matter for the public consultation and final design of this part of the regeneration area to formalise through further planning applications.

The application is therefore supported on the basis of its details being acceptable and given the wider tourism benefits of allowing the temporary uses of the land whilst the long-term regeneration is finalised.

CONSULTATIONS

Local Consultations

Exmouth Littleham - Cllr M Williamson

17/2944/FUL Land at Queens Drive, Exmouth, EX8. 2AY.

Ward Comment: Cllr Mark Williamson

I have several concerns about this application. However I believe each can be addressed either by amendment or condition.

1.The way in which the application came to the Town on three occasions did not reflect the expectations of developers set out in paras.188 & 189 of the NPPF. It was originally submitted as an addendum 4 days before the Planning Committee with a weekend in between and 4 working days before Christmas. A resubmission was accompanied by explanatory notes on the Planning Portal but no further detail as requested by the Town Council. Three computer generated pictures were then appended to a press release. The latest application was issued on Friday 2 February as an addendum to the Town Council Planning Committee on Monday 5 February.

We rightly expect all public bodies to follow the same submission and consultation standards as other applicants and if we do not do this we leave ourselves open to challenge.

2.The triple zoning of this currently unified site, entailing as it would a change of Use Class cannot be referenced by policy, indeed the opposite. On 17 January 2016 Strategic Planning Committee determined that The Exmouth Town Centre and Seafront Masterplan 2011 would be turned into Supplementary Planning Guidance and still used to inform decision making. It remains the only policy reference for this site.

3.Section 6 (Summary of Opportunities) describes 'a vibrant, colourful and active recreation/leisure zone for all ages focused on watersports and play'. It states that 'design should create a more permeable area that is less fragmented'. However the segmentation of the site as proposed does precisely the opposite. The children's play

area is allocated the smallest segment despite the fact that the entire site is designated lawfully for Leisure Uses (D2).

4. The Food & Drink zone occupies the largest segment and would entail a change of Use Class from D2 to a combination mix of A3, A4 & A5 (the sale of hot and cold food and drink for consumption on and off the premises). There are already over 20 food outlets on the seafront, almost all locally run, with 3 more to open. I cannot see how this large Food & Drink zone would be anything else but economically damaging to existing businesses. A single outlet would satisfy the specification outlined in The Masterplan.

A solution would be to condition the minimum number of food outlets which would enable the entire site to retain its designation as D2 (Leisure Uses).

5. The permanent infilling of the ponds is hugely unpopular, unnecessary and I cannot support it for the following reasons:

a). It is argued that application 17/0099/MRES entails that it is necessary for the ponds to be permanently filled. But the ponds are not mentioned in the application or the Committee Report.

b). The Council has agreed to fund an independent public consultation on the use of the Phase 3 site. Permanent infilling would pre-empt the outcome of this. For example it is possible that a pond or similar water facility in this location may form part of the eventual scheme.

c). The submitted document 2935714 (letter to Gavin Spiller from Alison Hayward) describes: "An informal and relaxed seating area...on the site of the existing boating lake which will be filled with loose material and topped with sand and decking walkways. Wooden seating and tables will be constructed using 'upcycled' materials. The seating area will include a decked areas accessed by boardwalks across the sand and allowing access for wheelchair users..."

d). It should be noted that a proposal to infill the 2 ponds with site-won material from adjacent highway works (Application No: 15/2493/FUL) was withdrawn on 30 October 2015 following public concerns.

It is recommended that an informative be agreed which postpones the permanent infilling until the outcome of the public consultation is agreed and implemented which would enable this to be reconsidered in due course. In the meantime the scheme outlined in 5c above should be implemented.

6. The 'Events Space', which would be used only occasionally, although compliant with D2 designation is adjacent to a residential and Conservation area. Whilst most concerns, particularly over evening events, are matters for Licensing this 'zone' is inappropriately located. The inclusion of a 'cinema screen' (document 2935714) remains in the Additional Information despite the concerns of the Town Council and residents. Such a screen was ruled out some years ago in The Strand because it was in a residential and Conservation Area. This site is adjacent to a residential and Conservation Area and should be ruled out for the same reasons. Other sites are available in the town which are not detrimental to residential amenity. This zone would be more appropriately used to extend the space available for children's play and landscaped for 'free play' which would have negligible amenity impact.

It is recommended that either a cinema screen is ruled out by Condition or that the applicant be asked to withdraw this particular proposal.

Notwithstanding the above I reserve my position until I am in full possession of all the relevant facts and arguments both for and against.

Parish/Town Council

Objection on the grounds that the information was too vague for a decision to be made and members felt the application should be withdrawn and resubmitted with more detail. The site was located near a residential and conservation area and members were concerned that no details were provided regarding performance times and noise levels. Members also objected to the permanent infilling of the ponds, these should be infilled on a temporary basis only. It was felt the timing of the application was undemocratic in terms of the late notification and pre-Christmas consultation period.

SINCE THIS MEETING EXMOUTH TOWN COUNCIL HAS BEEN INFORMED THAT THE CONSULATION PERIOD HAS BEEN EXTENDED TO 11 JANAUARY 2018.

Further comments:

Objection to the application still stood as before. The additional information did not address concerns that the details of the application were too vague for a decision to be made and gave conflicting information. The planning support statement stated, 'to also include the permanent infilling of existing boating ponds plus all associated infrastructure and development' yet the additional information stated, 'Whatever is used to fill the ponds could be removed in the future if required'. Members felt that the application should be withdrawn and resubmitted as an outline application if it was not possible to provide details of the facilities. Members also felt that there should be more emphasis on the provision of recreation and play and not on food outlets.

Further comments:

No Objection but members felt that future consultations and proposals needed to be sensitive to the public's feelings regarding the infilling of the ponds. Also, any food outlets should be mindful of the waste generated, in particular drinking vessels, considering the recent media coverage and plastics campaign

Technical Consultations

Environmental Health

I have considered this application and do not anticipate any environmental health impacts relevant to the planning process. The applicant should contact Environmental Health for advice regarding any proposed events which might involve music or other noise likely to be audible at the nearest residential premises, and should contact our commercial team for advice regarding any temporary food uses or any health and safety concern regarding event infrastructure. It is likely that a licence will be required for some of the proposed uses and advice should be sought from the licensing team.

Conservation

BRIEF DESCRIPTION OF HISTORIC CHARACTER/ ARCHITECTURAL MERIT:

The suitability of the area of land fronting Queens Drive, earmarked for comprehensive redevelopment to include; recreation, café, restaurants etc was considered through planning application 13/1819/MOUT and granted outline permission in early 2014.

Therefore, assessment of the area, in 2014 has been taken into account namely;

The heritage assets viewed from the area of the application site include the Trefusis Terrace (not listed) however fall within the periphery of the Conservation Area which is elevated to the north and provides a rhythmic roofscape to the skyline.

Furthermore the setting of the conservation area identified as the land between the raised ridgeline and the beach is presently very open and without any significant structures. This is quite indicative of Victorian seaside towns where pleasure garden by the sea were the norm and map evidence from 1890 suggests that the site was used as a cricket and football ground.

HOW WILL THE PROPOSED ALTERATIONS AFFECT THE HISTORIC CHARACTER OF THE BUILDING AND ITS SETTING:

In assessing the current proposal for the temporary use of the land for recreation entertainment and leisure, including permanent infill of the boating ponds, this has been balanced against application 13/1819/MOUT.

In this respect, the temporary use of the land for similar activities as that agreed through the 2013 application, would result no more harm than that already considered and accepted.

In relation to the infill of the boat ponds, this approach is unfortunate as the boat ponds are inherent to the historic use of the land as a recreational ground. However, these could if necessary be reinstated in the future.

In summary the proposed temporary use of the land for recreation, entertainment and leisure, would result in little more harm to the character of the conservation area as already agreed through application 13/1819/MOUT

PROVISIONAL RECOMMENDATION - PROPOSAL ACCEPTABLE

Further comments:

The amendments as proposed would result in no further harm to the character of the area, therefore the comments as provided on the 23 January 2018, still stand.

County Highway Authority

As long as part of the adjacent car park remains available throughout the temporary use, I do not see parking to be an issue for this planning application. Therefore I will re-address my response to reject this additional information.

Further to our comments made on Wednesday 3rd January 2018, we have now been informed that a section of the adjacent car park to this temporary use site will remain open for visiting car parking throughout the temporary use of this application. In light

of this, I no longer believe car parking will be an issue for the attraction and therefore have no objections to this development.

Other Representations

58 representations have been received as a result of this application, 48 of which raise concerns that can be summarised as follows:

- Anti-social behaviour as a result of events being held with the large TV screen;
- This is a special area to be carefully managed - temporary events are not the answer;
- Temporary uses to replace established fun park fails to respect the historic sea front;
- Noise pollution;
- Light pollution;
- Infilling of ponds needs to be postponed until public consultation has taken place for phase 3;
- Litter from street markets;
- Application too vague;
- Protected grassland on site;
- Wildlife nearby;
- Insufficient parking available for vehicles, especially when the new road is started;
- No need for additional food stalls in this location;
- Other more relevant uses the site could be put to.

8 letters of support have been received, principally relating to the images that have been released into the public domain of the play park.

PLANNING HISTORY

Reference	Description	Decision	Date
13/1819/MOUT	Construction of new buildings on 3.6 hectare site for : watersports centre with storage (1450m2); holiday accommodation with parking and gardens (3000m2); indoor leisure activity buildings (1165m2) with external attractions and staff parking; new cafe, restaurant and retail use (1200m2); a minimum 250 space car park: landscaping; realignment of Queens Drive and continuation of pedestrian promenade; improved connectivity to the Maer and beach; and the selected demolition of existing buildings. Outline planning application with all matters reserved except layout.	Approval with conditions	24.01.2014
15/2487/MRES	Approval of access, appearance, landscaping and scale for the highway re-alignment and parking areas, demolition of cafe, selected beach huts and shelter as part of the reserved matters of outline application 13/1819/MOUT.	Approval with conditions	21.03.2016
15/2493/FUL	Infill of 2 no ponds with site-won material from adjacent highway works	Withdrawn	11.03.2016

17/0099/MRES	Reserved matters application pursuant to outline application 13/1819/MOUT seeking approval of access, appearance, landscaping and scale for the construction of new buildings including watersports centre, holiday accommodation, indoor leisure and retail uses.	Approval with conditions	13.04.2017
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POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 6 (Development within Built-up Area Boundaries)

D1 (Design and Local Distinctiveness)

Strategy 22 (Development at Exmouth)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

TC7 (Adequacy of Road Network and Site Access)

EN14 (Control of Pollution)

EN9 (Development Affecting a Designated Heritage Asset)

EN21 (River and Coastal Flooding)

Strategy 33 (Promotion of Tourism in East Devon)

E20 (Provision of Visitor Attractions)

The Exmouth Town Centre and Seafront Masterplan 2011

Government Planning Documents

NPPF (National Planning Policy Framework 2012)

National Planning Practice Guidance

Site Location and Description

The site lies within the built up area boundary of Exmouth, this part of which is recognised as a regeneration area; it lies close to the Exmouth Conservation Area to the north. It formerly comprised an outside amusement park, boating pond, childrens play area, crazy golf course and kiosk, all with the exception of the kiosk have now

been cleared from the site and it has been fenced off from public access. There are a number of existing public accesses onto the land.

To the south of the site lies Queens Drive with the beach and sea beyond. To the north an escarpment with residential properties on top, to the east is the bowling club and further parts of the regeneration area and to the west lies the public toilets and Ocean Building.

Proposed Development

This application seeks planning permission for the use of the land for a temporary period of 12 months for the following purposes, split into three broad areas identified on the site plan as red (food and drink), green (childrens play) and blue (events space):

Red area - Food and drink - This area comprises the south western most part of the site, the details submitted with the application indicate that there would be a seating area on top of the existing boating pond (which would be filled with loose material and topped with sand) accessed via wooden decking/boardwalks, the existing kiosk would be used as a bar. An illustrative layout of the seating area has been submitted as additional information stating that upcycled materials would be used. The rest of this area would be used for mobile catering facilities. The maximum height of any structure in this area would be 5 metres in height.

Green area - Childrens play - This area comprises the south eastern most part of the site, the details submitted with the application indicate that there would be various types of childrens play equipment on the site for use by children and teenagers. An illustrative layout has been submitted around a Jurassic Coast theme. The maximum height of any structure on this area would be 10 metres in height.

Blue area - Event space - This area comprises the northern most part of the site, the details submitted with the application indicate that there would be a variety of different uses including outdoor theatre, circus, outdoor cinema, mini family festivals, ballet etc... An events manager has been appointed to prepare and manage a programme of events for this area. The maximum height of any structure on this area would be 10 metres in height.

The site plan also indicates a number of pedestrian and vehicular access points.

ANALYSIS

The main considerations in the determination of this application relate to the principle of the proposed development, the impact of the proposal on its surroundings, impact on residential amenity, impact on the Conservation Area, impact on highway safety and any ecological impact.

Principle

The site lies within the built up area boundary of Exmouth, where there has been along and established history of recreational/leisure activities taking place and which has historically been covered by The Exmouth Town Centre and Seafront Masterplan 2001 that supported regeneration of the site.

This area also forms part of a wider regeneration area identified in supported text to Strategy 22 of the Local Plan as a regeneration area and has been the subject of previous applications and public consultations seeking to secure long term uses. This site forms part of Phase 3 with Phase 1 comprising the consented re-aligned Queens Drive, Phase 2 a currently proposed Watersports Centre with phase 3 currently being subject to further consideration and future consultation. Whilst the future of the phase 3 area is being finalised, the proposal seeks consent for a number of temporary uses to enable the site to be utilised in the interim.

The East Devon Local Plan supports the provision of tourist and visitor attractions under Policy E20 subject to a number of criteria. In addition, the application is seeking temporary consent for a mix of recreation and leisure uses on a site previous used for similar uses. As such, the proposal is acceptable in principle.

However, the proposal needs to be considered against each of the criteria to Policy E20 to ensure that the proposal is acceptable in detail. This assessment is set out below and covers the remaining keys issues for consideration.

Impact on the surrounding landscape and features or on any areas of natural, cultural or heritage interest.

The surrounding area is relatively flat save for the escarpment to the north which is tree covered and outside of the application site. The use of the land for recreational uses next to the public beach and public promenade is considered to be consistent with surrounding and historic land uses and landscape features.

The heritage assets viewed from the area of the application site include the Trefusis Terrace (not listed but falling within the periphery of the Conservation Area) which is elevated to the north and provides a rhythmic roofscape to the skyline. Furthermore the setting of the conservation area identified as the land between the raised ridgeline and the beach is presently very open and without any significant structures. This is quite indicative of Victorian seaside towns where pleasure gardens by the sea were the norm and map evidence from 1890 suggests that the site was used as a cricket and football ground.

In assessing the current proposal for the temporary use of the land for recreation entertainment and leisure, including permanent infill of the boating ponds, this has been balanced against application 13/1819/MOUT. In this respect, the temporary use of the land for similar activities as that already on site and agreed through the 2013 application, would result no more harm.

In relation to the infill of the boat ponds, whilst the boat ponds are inherent to the historic use of the land as a recreational ground, there can be no objection to their removal/in-filling given that their removal has already been consented as part of the previous reserve matters application on the site and as they could if necessary be reinstated in the future.

As the final details of the appearance of the three areas is unknown, it is considered that a condition is required to ensure the submission and approval of the details of any structures placed on the site in the interests of ensure a suitable visual impact. As

there are permitted development rights for certain uses and structures for 28 days of a year, it is recommended that the details of any structures placed on the land for more than 28 days be submitted for approval.

Scale and siting

At this part of the seafront the surroundings are relatively open in character, however, as the application states that no structure across the whole of the site would be more than 10 metres in height (5 metres in the food and drink area), consideration must be given to how structures of this height would impact on surroundings. On the basis of the illustrative plans submitted as additional information, it would appear that at the most visible part of the site from the seafront there would be a main focal piece of play equipment. This would not be sited immediately on the front of the site, and given that only a temporary consent is being applied for, it is considered that there would not be a detrimental visual impact. The height of structures across the site can be controlled by an appropriately worded condition.

In the northern most part of the site, again approval is sought for structures up to 10 metres in height. This is a large open area framed by mature trees to the north and hedgerows to the east and west and as such any temporary structure up to 10 metres in height is not considered to detrimentally impact on its surroundings or the character and appearance of the Conservation Area.

Access, road safety and congestion.

The local road network surrounding the site is considered to be sufficient to accept the visitor number likely to be generated by this proposal, allied to this it must be remembered that there was previously a recreational use on the site. Furthermore, there are a number of pay and display car parks in the vicinity together with chargeable on street parking and the promenade is a popular walking route from further afield. Devon County Highways Engineer raises no objections to the proposed development. Walking and cycling are popular with people using the promenade and seafront more generally, furthermore, the site is on a bus route. It is therefore considered that there are a variety of modes of transport serving the site.

Effect on the amenity of nearby residents.

The foremost residential neighbours to be impacted upon as a result of this proposal would be those to the north of the site on Trefusis Terrace who could be impacted upon through additional noise and disturbance especially during unsociable hours.

In consultation with the Council's Environmental Health Officer it is considered necessary to restrict the hours of use from 9am to 10pm daily, as each individual event would have its own noise implications there is not a standard noise condition that can be applied in planning terms. Rather the Environmental Health Officer considers that bespoke controls through other necessary licensing applications to the Council is more appropriate in this instance given that it is an outside venue.

It is recognised that there will probably not be the need for large scale temporary lighting rigs to be erected given the hours of use restriction through the summer

months, however, the bar and seating area together with the events space may need some form of lighting, and for this reason it is considered necessary to impose a condition seeking details of any lighting to be erected through a lighting scheme.

Ecology

The area where the children's play area is proposed contains a number of species of protected grasses and dune eco-systems. This area was surveyed during the outline application (13/1819/MOUT) and reserved matters application (17/0099/MRES) and mitigation measures and/or translocation measures were outlined in the environmental statement. As part of the Appropriate Assessment procedure for this current application it is considered that mitigation measures would be required on this site to ensure the grasses/dune eco systems are protected, particularly on the area where the children's play area is proposed. This can be covered by condition.

In terms of impact on the Exe Estuary, given the former use as recreation space and the fact that no increase in site area is proposed the development would have a similar impact to that already taking place and no further mitigation measures would be required. The original outline application was subject to an Environmental Statement given the proposal involving a watersport centre and holiday accommodation and the likelihood that these uses would result in increased pressure on the use of the estuary and therefore the potential for likely significant effects on the wildlife designations. As this current application does not include the watersports centre or holiday accommodation, and is proposing recreation/leisure uses on a site historically in these uses, it is not considered that this proposal will have any likely significant effects on the estuary.

Other comments

Representations have been received regarding the erection of a large television screen for a range of national and international sports events that are taking place during the summer months such as Wimbledon and the football World Cup. The hours of use controls and licensing consent regime for such event can control the potential for anti-social disturbance. The use of the land for this purpose could be used for 28 day in any calendar year in any event without requiring planning permission and without any planning controls.

Comments have also been received regarding the impact that the retail/food stalls could have on existing businesses in and around the Queens Drive area. In terms of a sequential approach to retail, the NPPF and Local Plan both seek to protect the town centre from non-retail uses. However, the proposal is for a limited time (12 months) and of a specialist nature and replaces a number of other food/drink/retail uses across the site. In light of this, and given that the food and drink uses are confined to a small part of the site, it is not considered that the proposal will harm the vitality or viability of the town centre.

Any permission would be time limited and the use would need to cease and any new structures removed from the land on the expiry of the twelve months. However, the ponds would be permanently infilled, though as previously stated in this report that does not mean in the wider regeneration of the sea front that these ponds could not

be re-instated once the design concept for this area has been produced and publicly consulted upon.

Conclusion

The application seeks temporary consent for 12 months for the use of the site split into three zones – food and drink, children’s play and events.

Given that the site benefits from consent for redevelopment, the site has historically been used for recreation and leisure uses, and the Local Plan supports tourist generating uses, the principle of the development is acceptable. A temporary consent will allow use of the site in the interim whilst its long-term future is considered and consulted upon.

Subject to conditions controlling the height of structures within each zone, and the submission of elevation details for structures to be placed on the site in excess of 28-days, it is not considered that the proposal will have a detrimental visual impact and will not harm the nearby conservation area.

A condition can be imposed controlling the wider hours of use of the site as a whole and whilst concerns have been expressed regarding noise and impact from an events space and food and drink uses, such events and uses would need to apply for separate licences whereby the details of the proposal and hours can be considered and controlled.

There are not considered to be any ecological impacts that cannot be controlled by condition and there is no likely significant effects likely upon the Exe estuary.

Subject therefore to a number of conditions, the application is supported on the basis of a lack of identified harm coupled with the benefits of allowing the site to be utilised whilst the longer-term future is considered and resolved.

RECOMMENDATION

APPROVE subject to the following conditions:

1. The use of the land hereby permitted shall only operate for a period of 12 months from the date of this decision. Once the use has ceased all structures shall be permanently removed.
(Reason - The permission is for a temporary period only and to ensure the site is restored in the interests of the appearance of the site and surrounding area in accordance with policy D1(Design and Local Distinctiveness) and EN10 (Conservation Areas) of the East Devon Local Plan.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)

3. The use(s) hereby approved shall only be operated between the hours of 9am to 10pm.
(Reason - In the interests of neighbouring amenity in accordance with policies EN14 (Control of Pollution) and D1 (Design and Local distinctiveness) of the East Devon Local Plan.

4. Prior to installation of any lighting on site, a lighting scheme shall be provided for the site which complies with the requirements of the Institute of Light Engineers guidance on the avoidance of light pollution. The lamps used shall not be capable of reflecting light laterally, upwards or off the ground surface in such a way that light pollution is caused. No area lighting shall be operated outside the agreed working hours of the site, although low height, low level, local security lighting may be acceptable. The development shall thereafter be carried out in accordance with the agreed scheme.
(Reason: To ensure that light pollution levels are kept to a minimum in accordance with Policy EN14 (Control of Pollution) of the East Devon Local Plan)

5. The heights of any structure in the zones specified below shall not exceed:
 - Food and drink - 5 metres
 - Childrens play - 10 metres and no structure exceeding 4 metres in height shall be located within 5 metres of any boundary of the site
 - Event space - 10 metres and no structure exceeding 4 metres in height shall be located within 5 metres of any boundary of the site
 (Reason: In the interests of the character and appearance of the area in accordance with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).

6. Prior to commencement of development a scheme to mitigate the rare grasses and eco-systems identified on drawing number Figure 2 received on 8th December 2017 shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with such agreed details.
(Reason: To ensure that the protected grasses/eco-system are protected during the proposed development in accordance with Policy EN5 (Wildlife Habitats and Features) of the East Devon Local Plan).

7. Prior to the siting of any movable or permanent structures or features (such as seating areas, children's play equipment, event space facilities or food and drink retail facilities) on the site for a period in excess of 28 days, elevational details of the structures and features shall have been submitted to and approved in writing by the Local Planning Authority.
(Reason: In the interests of the character and appearance of the area in accordance with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).

8. Prior to the provision of any hard surfacing to the boating ponds, details of the materials and finish shall have been submitted to and approved in writing by the

Local Planning Authority. Thereafter the hard surfacing shall be carried out and retained in full accordance with the approved details.
(Reason: In the interests of the character and appearance of the area in accordance with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan).

NOTE FOR APPLICANT

Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

Plans relating to this application:

	Location Plan	11.12.17
TEMPORAY USES	Other Plans	08.12.17

List of Background Papers

Application file, consultations and policy documents referred to in the report.

Ward Exmouth Town

Reference 17/2948/FUL

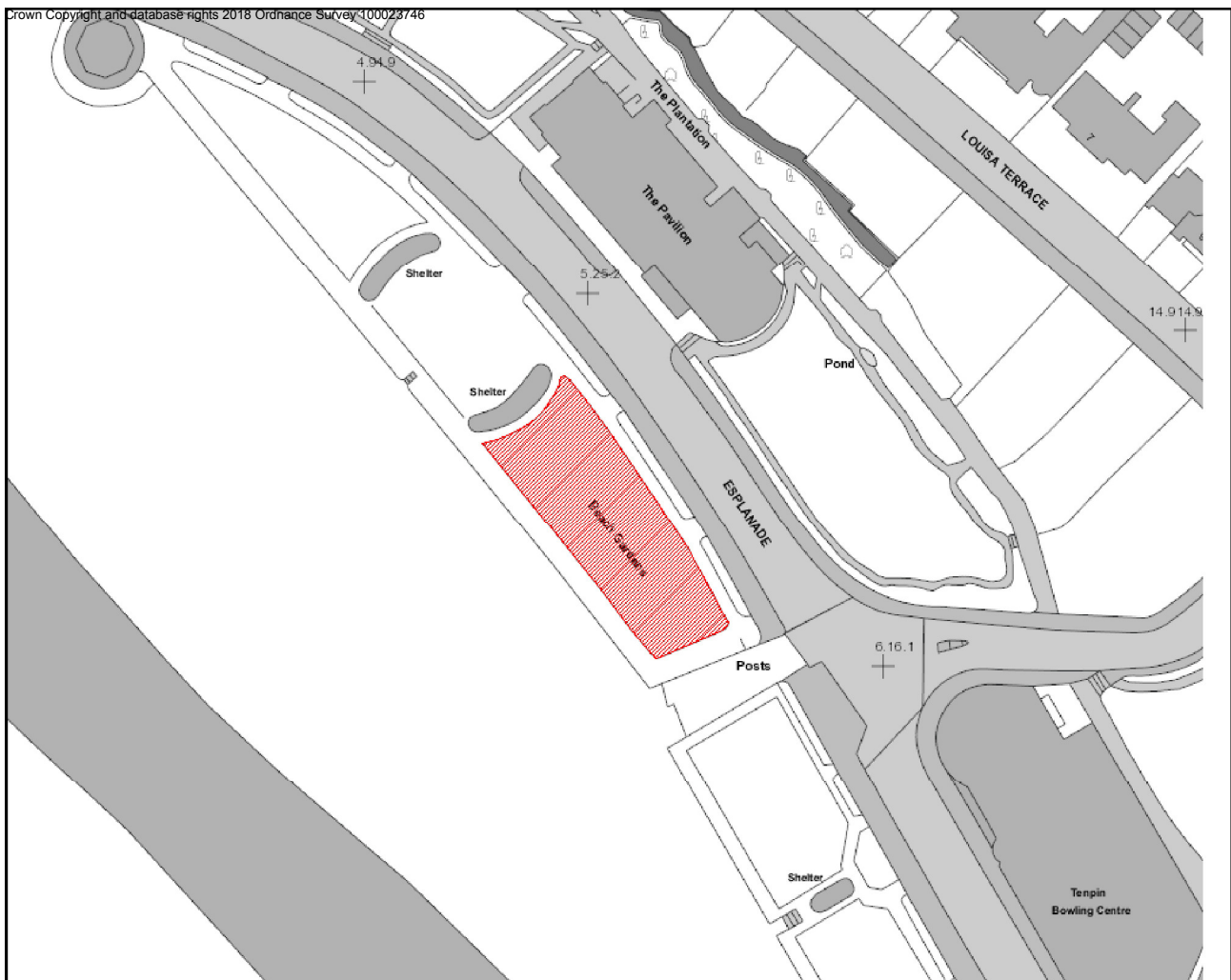
Applicant Mr Kray Mattia

Location Beach Gardens Exmouth

Proposal Temporary change of use of land for siting of 28m observation wheel for two years (between periods 24 March 2018 and 6 September 2018 and 15 April 2019 and 8 September 2019)



RECOMMENDATION: Approval with conditions



		Committee Date: 6 th March 2018
Exmouth Town (EXMOUTH)	17/2948/FUL	Target Date: 05.03.2018
Applicant:	Mr Kray Mattia	
Location:	Beach Gardens Exmouth	
Proposal:	Temporary change of use of land for siting of 28m observation wheel for two years (between periods 24 March 2018 and 6 September 2018 and 15 April 2019 and 8 September 2019)	

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

This application is before Members as it is on land owned by East Devon District Council, and objections have been received to the proposal.

Members will recall that a temporary consent was granted in 2017 to site an observation wheel measuring 28m in height on Exmouth seafront. It is now proposed to site the wheel for two separate temporary periods during the summers of 2018 and 2019.

It is again considered that the wheel is located in a prominent position close to the conservation area of Exmouth. However, as demonstrated when the wheel was in-situ, it is considered that the proposal does not detrimentally harm the appearance of the site and the surrounding area. It demonstrated economic benefits as it is estimated that around 12,000 people used the wheel during the last temporary consent. Whilst concerns have been raised about noise and music from the wheel, these can be controlled through Environmental Health powers.

In light of the lack of permanent visual harm, and given the tourism and economic benefits from the proposal, it is therefore considered that a temporary use will again be acceptable.

CONSULTATIONS

Local Consultations

Town Council

No Objection subject to the lighting on the ticket office being static and not flashing in the interest of the residential amenity

Technical Consultations

County Highway Authority

Does not wish to comment

Environmental Health

I have considered the application and note that some residents have noticed flashing lights and some music noise associated with the operation during the summer of 2017. Concerns such as this are best raised with Environmental Health as any such impacts are avoidable and resolvable. We therefore have no concerns regarding the wheel returning for a longer period and will contact the operator when they arrive on site in order to discuss any potential off-site issues

Other Representations

10 letters of representation have been received

1 letter of support

- Consider it a normal attraction to have, which we and our family enjoyed more than once.
- It was visually acceptable from both the Esplanade level and from the roadways higher up the hillside.
- The wheel last summer afforded a lot of pleasure to residents and their visitors and holiday makers in general, young and elderly alike.
- Would bring the advantage of gaining beautiful views across the Exe Estuary which cannot be gained from any other vantage point.
- Additionally, it would have the effect of encouraging much needed footfall into the Town Centre instead of funnelling all the attractions away from the town and towards the seafront.

9 letters of objection

- This huge structure would dominate the beautiful sweep of Exmouth seafront from every angle from the Marina to Harbour View Cafe as it did last summer.
- The view that it provides is only that which can be seen by walking along The Beacon, a conservation area which the wheel would dominate.
- The Imperial Ground is a far more suitable area for a structure such as this

- The thought of having to put up with 6 months of the wheel fills me with dread and prompts me to ask if Exmouth will soon become known as Little Torquay.
- The clanking sound from the wheel last year was very noticeable
- Has any alternative site has been investigated or recommended by all parties involved with the application.
- The vista from the Pavilion area towards Louisa Terrace/The Beacon will be obstructed and I thought that this vista was protected.
- The observation wheel will be adjacent to a Conservation Area and within sight of Grade 2 listed buildings on the Beacon and Louisa Terrace.
- The observation wheel will be immediately in front of the "Viewpoint Open" detailed in the East Devon District Council Website under "Important Features - The Beacon and Louisa Terrace".
- The Observation wheel will detract from this important feature for six months of each year.
- The logical site would be in the fun park alongside the boating pond.
- During the operation of the observation wheel in 2017 there were occasions when there was significant noise caused by users of the wheel, causing upset to local residents.
- There is restricted parking in the area of Beach Gardens and users of the wheel may cause traffic congestion at busy times.
- The size, design and materials are inappropriate so close to this residential area.
- The plans submitted do not show the size and scale of the wheel in relation to the adjoining buildings, nor the exact siting.
- The two year period, for six months of the year, will be tantamount to a permanent installation, which is unacceptable.
- The summer months in particular are when we should be allowed to have quiet enjoyment of our gardens and homes; the wheel would greatly impact on this.
- The site is also part of the public gardens and open space and will significantly reduce the access and quiet enjoyment of the area.
- The use of the wheel will result in unacceptable overlooking of our flat and gardens, resulting in a loss of privacy and amenity.
- This use will also result in noise and light pollution, very close to our property and others.
- Parking is already an issue and the siting of this wheel will increase the vehicular movements in the area.
- We note that the power for the wheel is from a diesel generator which will create localised air pollution and noise.
- There is no Design and Access Statement and due to its location adjoining the Conservation Area, we consider that a Heritage Statement would be appropriate.
- We suggest an alternative site would be by the train station, where it would have little impact but be easily accessible to the public.
- When the wheel was erected in 2017 it was an eyesore on the landscape of an otherwise natural setting. It created light pollution and noise pollution.
- Music was played from the immediate vicinity.
- The area proposed can be subject to both flooding and high winds: in an extreme case the wheel could create flying objects in that particular place.

- As the old play park is being proposed as a venue for a big screen during the World Cup, would consider this a more reasonable location for the wheel:
- We bought our property in 2017, because of the natural beauty of the view and the character of Exmouth seafront.
- It may be better sited further east in the area planned for the proposed water sports centre and closer to the other amusements in the Ocean.
- Last year the ticket office had unsightly flashing lights which were a continuing intrusion on the historic Exmouth waterfront.
- Wheel should be turned sideways
- Should be no larger than one last year

PLANNING HISTORY

Reference	Description	Decision	Date
17/1668/FUL	Temporary change of use of land for siting of 28m observation wheel.	Approval with conditions	06.09.2017

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

D1 (Design and Local Distinctiveness)

EN10 (Conservation Areas)

Strategy 6 (Development within Built-up Area Boundaries)

Strategy 33 (Promotion of Tourism in East Devon)

Site Location and Description

The site is located on land opposite Carlton Hill, Exmouth and is currently used as part of the gardens area of Exmouth Esplanade. As such the site forms a discrete grassed area between the main seafront road, Carlton Hill Slipway and the seawall and beach. The site lies outside of the Exmouth Conservation which is located to the north and east of the site behind The Pavilion and contains a number of listed buildings.

Proposal

As with the previous application in 2017, the proposal is for the temporary siting of an observational wheel. The wheel could be sited on the land for 28 days without the need for planning permission under permitted development rights but this application proposes an additional temporary time period such that the wheel can be operated on the site from 24th March to 6th September 2018 and 15th April to 8th September 2019.

ANALYSIS

The main issues to consider relate to:

- a) Whether the principle of development is acceptable and will harm the character or appearance of the conservation area or affect the setting of any adjacent listed buildings or character of the designed landscape;
- b) Whether residential amenity will be adversely affected;
- c) Whether there are any traffic or road safety concerns.

Principle and impact

Tourism is a key sector in the East Devon economy. The coastal towns of East Devon form one of the focal points for tourism but the draw to visitors extends beyond these resorts into the stunning coastline between them, the wonderful countryside and the picture postcard villages that East Devon has to offer. The promotion of a year round tourist industry in East Devon is important to maintain a vibrant visitor and business environment for the District.

Strategy 33 of the East Devon local plan says that "The Council will support and facilitate high quality tourism in East Devon that promotes a year-round industry that is responsive to changing visitor demands. Tourism growth should be sustainable and should not damage the natural assets of the District but aim to attract new tourism related businesses that can complement the high quality environment of East Devon"

The wheel would be visible from a wide area given its overall proposed height. It would be dominant in the locality being clearly visible from the gardens, seafront and beach. There are views from the conservation area to the east of the site and these views are identified as a key viewpoint within the conservation area appraisal. However, as evidenced from when the wheel was operational last year, it is considered that substantial views are still achievable from Louisa Terrace given that its lattice structure does not completely block views. Representations have been received raising concern over the loss of private views, but this cannot be considered as a planning matter of any significant weight.

It is considered in visual terms that there is some impact on the character of the conservation area given its height and form of the wheel. However the impact would not be harmful as it would only be in the short term, it is clearly a temporary structure by nature, and is the type of structure would be compatible with the tourism nature of this area of Exmouth. There would be no harm to the setting of the listed buildings within the Conservation Area given their considerable distance from the proposed observation wheel.

It has been stated that during the temporary period last year that more than 12,000 people used the wheel. The proposal will therefore aid tourism whilst having a short-term visual impact that is not considered to cause harm to the amenity of the area.

The proposal will therefore aid tourism whilst having a short-term visual impact that is not considered to cause harm to the amenity of the area whilst preserving the character and appearance of the adjoining Conservation Area and setting of listed buildings.

Residential amenity

In terms of neighbouring amenity there are residential properties to the east of the site which face towards the wheel. Given the separation distance (in excess of 100m) it is not considered the proposal would harm the amenity of the occupiers.

In terms of noise, concerns have been raised regarding lighting and music emanating from the wheel. Environmental Health have stated that they do not object to the proposal. The lights and music can be addressed directly with the operator when they arrive, so the lights don't need to flash and the music can be turned down under their own powers. Given this it is not considered that a planning objection is raised. It is however considered reasonable to allow the wheel to operate between the hours of 10am and 9pm as requested within the application and as conditioned as part of the previous application.

Highway safety

The proposal is temporary with no objection received from the Highway Authority. The site is close to parking facilities, and as such there are no traffic or road safety concerns.

Other matters

It is not considered that there are any planning reasons why an application could not be submitted to cover two separate time periods. It would not be different from a normal 3 year permanent consent, but which was time restricted by condition. Further, the guidance contained within the National Planning Policy states that temporary conditions can be considered where a trial run is needed to assess effects or where it is expected that planning circumstances might change in a particular way at the end of the period. It states a temporary use can make good use of vacant land prior to any longer term regeneration plans coming forward. The Guide states it will rarely be justifiable to grant a second temporary permission - further permission should normally be granted permanently or refused if there is clear justification for doing so. Given that the wider regeneration of the seafront is on-going, there is considered to be a clear justification for a further temporary permission.

Representations have been received regarding why a different site, or the Queens Drive site could not be used. In response, Officers can only comment on the application before them and in light of any harm arising from the proposal, it is supported.

It is accepted that part of Beach Gardens would be lost so that the wheel could be sited on the land. However the proposal is for a temporary period only and therefore the gardens would be available for the remaining period of the year. The use would still be recreational, there are public gardens adjacent, and it is not therefore considered that an objection on the loss of the garden could be raised.

Conclusion

Temporary planning permission is again being sought for an observation wheel for the summer period for 2018 and 2019.

Whilst there will be a short term and temporary change to views out of the nearby Conservation Area, these are not considered to be harmful given the temporary nature of the proposal, its lattice design, and the distance from the Conservation Area. In addition, the tourism benefits that the proposal brings outweighs any change to the temporary views out of the Conservation Area. There would be no harm to nearby listed buildings.

Given that the wheel is temporary in nature, and given the wider tourism benefits from the proposal, it is again supported subject to conditions controlling its time of use.

RECOMMENDATION

APPROVE subject to the following conditions:

1. The use hereby permitted shall only operate between the following dates:

24th March 2018 and 6th September 2018
15 April 2019 and 8th September 2019

Outside of the dates the use shall be discontinued with the wheel and apparatus permanently removed.

(Reason - The permission is for a temporary period only and to ensure the site is restored in the interests of the appearance of the site and surrounding area in accordance with policy D1 (Design and Local Distinctiveness) and EN10 (Conservation Areas) of the East Devon Local Plan.

2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)

3. The wheel hereby approved shall only be operated between the hours of 9am to 10pm.
(Reason - In the interests of neighbouring amenity in accordance with policy D1 (Design and Local distinctiveness) of the East Devon Local Plan.

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District

Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

If you have any queries regarding this, please contact us on 01395 571585 or email cil@eastdevon.gov.uk

Plans relating to this application:

A	Location Plan	08.12.17
B	Location Plan	19.12.17
POWER ELECTRICS	Additional Information	19.12.17
GIANT WHEEL INFO	Additional Information	19.12.17

List of Background Papers

Application file, consultations and policy documents referred to in the report.

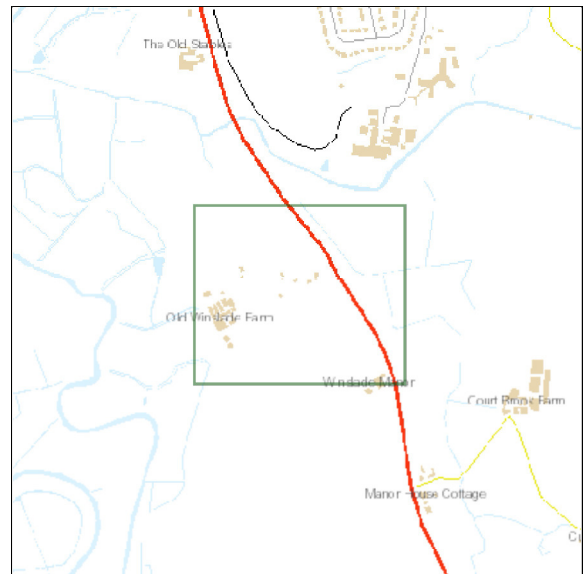
Ward Clyst Valley

Reference 17/2796/FUL

Applicant Mr & Mrs Lee

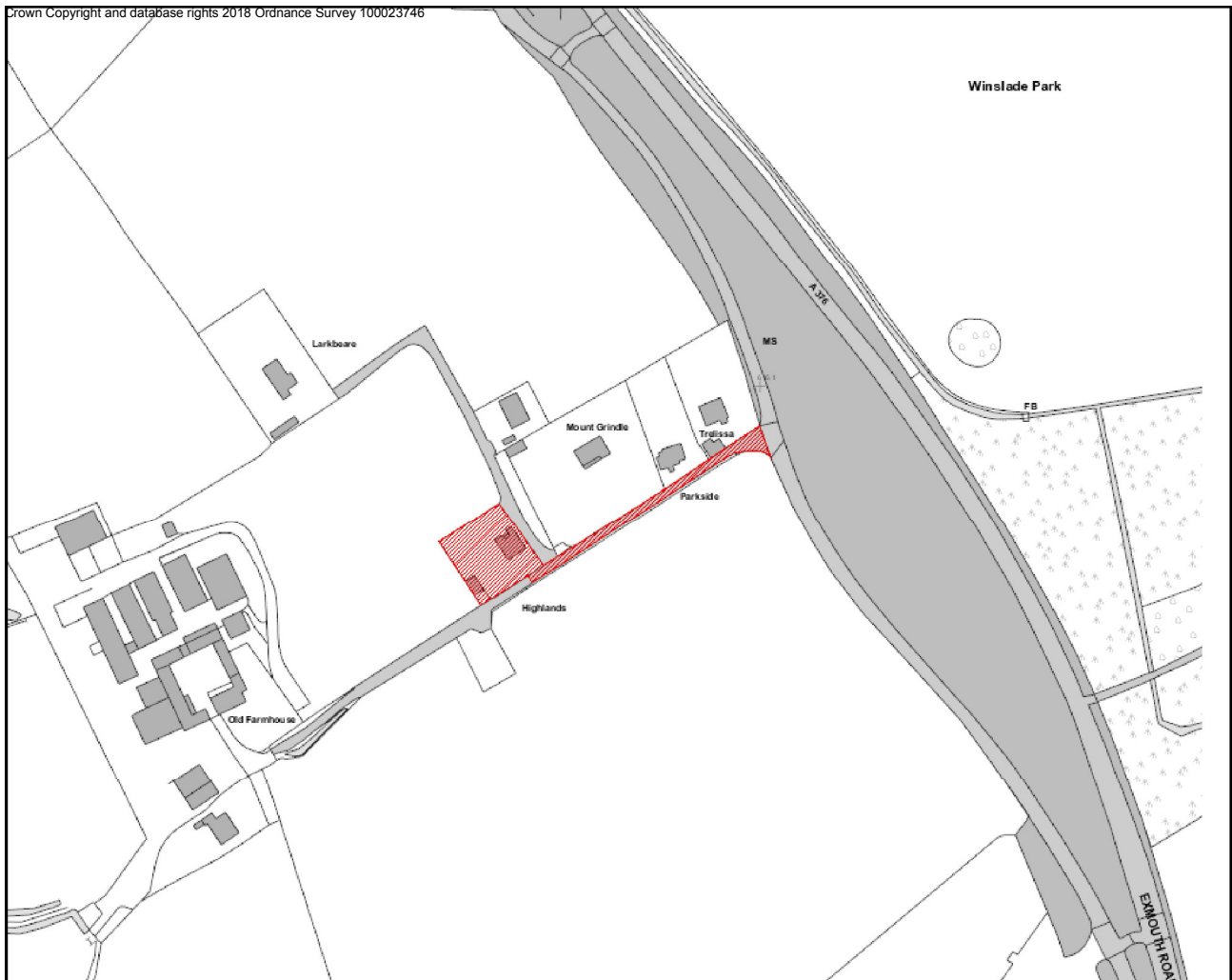
Location Highlands Clyst St Mary Exeter EX5 1AS

Proposal Construction of a replacement dwelling



RECOMMENDATION: Approval with conditions

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		Committee Date: 6th March 2018
Clyst Valley (CLYST ST GEORGE)	17/2796/FUL	Target Date: 26.01.2018
Applicant:	Mr & Mrs Lee	
Location:	Highlands Clyst St Mary	
Proposal:	Construction of a replacement dwelling	

RECOMMENDATION: Approval subject to conditions

EXECUTIVE SUMMARY

This application is before Members as the officer recommendation is contrary to the view of the Ward Member.

This application seeks approval for a two storey dwelling with a flat roof having a ground floor footprint of around 150m² and seeks to overcome the reason for refusal on the previous application through the re-orientation of the site and provision of a flat roof. The accommodation comprises living accommodation on the ground floor with four bedrooms (three en-suite) and a bathroom on the first floor. A large balcony/terrace is proposed above the main living room on the south western side of the house.

The application site occupies a prominent position on a plateau within an area of open countryside and the existing bungalow is clearly visible from various vantage points on the A376. The proposed dwelling, as previously, would be more prominent, partly due to the significantly larger building proposed in terms of width, height and bulk, but also due to the more central positioning within the site. The application site occupies the highest point in the immediate vicinity, and whilst this affords wide reaching views from within it, it also results in the building being visible from the surrounding area.

The fact that a site is visible is not in itself necessarily an issue, especially as a bespoke design of dwelling has been produced with a flat roof (save for the chimney). It is recognised that the proposal would have more of an impact than the existing through its bulkier form being approximately 1 metre higher than the existing bungalow and 17 metres wide on the elevation that would be most prominent (when travelling north on the A376) verses an elevation that is currently 9 metres in length. However, that being said the large proposed balcony at first floor height would mean that only 12.5 metres of building would be visible and from a relatively distant transitory view.

The use of traditional materials to assimilate the dwelling into its surroundings together with enhanced landscaping is considered to be appropriate and can be secured by condition.

The dwelling would not detrimentally impact on residential amenity, highway safety or protected species and therefore the application is recommended for approval.

CONSULTATIONS

Local Consultations

Parish/Town Council

The Parish Council objects to the application. The proposed dwelling is substantially larger than the property which currently exists and will result in a dwelling which is not in keeping with its surroundings, will negatively impact on the landscape and have a negative visual impact on the hillside when viewed from the road.

The Council would also highlight that there appears to be a number of inconsistencies within the application.

Clyst Valley - Cllr M Howe

Object to the application

Yes

In the event my recommendation and that of the Planning Officer differs, I wish the application to be referred to Development Control Committee

Yes

Relevant planning observations on the planning application to support my recommendation above:

This still is a very substantial building in a design that doesn't fit the character of the area or the surrounding buildings, although a replacement dwelling can and should be supported in this location the design and bulk of this design will still have a unduly detrimental impact upon the rural character and appearance of the open countryside which it is located, and in particular policy D1.

Disclaimer Clause: In the event that this application comes to Committee I would reserve my position until I am in full possession of all the relevant facts and arguments for and against.

Other Representations

Three representations have been received raising the following concerns:

- Design not in keeping with surroundings;
- Blot on the landscape;
- Increase traffic;
- Overshadowing of surrounding properties;
- Overlooking;

- Overdevelopment of site;
- No outbuilding indicated causing pressure for more buildings at a later date;
- No natural screening of the site;
- Wrong type of building in wrong location.

PLANNING HISTORY

Reference	Description	Decision	Date
16/2753/FUL	Construction of replacement dwelling	Refusal	30.01.2017
16/2933/COU	Temporary use of land for the siting of 2no mobile homes for residential purposes (retrospective application)	Approval with conditions	09.03.2017
17/0987/FUL	Construction of replacement dwelling	Refusal	16.06.2017

The most recent application (17/0987/FUL) was refused for the following reason and proposed a building with a pitched roof and different orientation:

‘The proposed dwelling by virtue of its scale, bulk, design and position would be visually dominant and incongruous in this prominent and elevated location. It would consequently result in a form of development which would have an unduly detrimental impact upon the rural character and appearance of the open countryside within which it is located. The development is therefore contrary to the provisions of Strategies 7 (Development in the Countryside) and 8 (Development in Green Wedges) and Policies D1 (Design and Local Distinctiveness) and H6 (Replacement of Existing Dwellings in the Countryside) of the East Devon Local Plan 2013-2031 and guidance contained in the National Planning Policy Framework and Planning Practice Guidance’.

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 7 (Development in the Countryside)

Strategy 8 (Development in Green Wedge)

H6 (Replacement of Existing Dwellings in the Countryside)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D3 (Trees and Development Sites)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

EN14 (Control of Pollution)

Government Planning Documents

NPPF (National Planning Policy Framework 2012)

National Planning Practice Guidance

Site Location and Description

The application site is located in the open countryside and is presently occupied by a modest bungalow. It occupies an elevated position accessed from a narrow lane which runs to the west of the A376 Exmouth Road, between the roundabout at Clyst St George and the village of Clyst St Mary. The lane leads to Old Winslade Farm and in addition to this and the bungalow known as Hillside, serves a further 6 residential dwellings.

The site is located with the Green Wedge on land adjoining the Exe Estuary and West of the A376 north of Lympstone to the Royal Marines site and North of Exton to Marsh Barton.

Proposed Development

Planning permission is sought for the demolition of the existing property on the site and its replacement with a new two storey dwelling. The application is a resubmission of a previous proposal which was submitted under reference 17/0987/FUL and refused by notice dated 16th June 2017.

This application seeks approval for a two storey dwelling having a ground floor footprint of around 150m². The accommodation comprises living accommodation on the ground floor with four bedrooms (three en-suite) and a bathroom on the first floor. A large balcony/terrace is proposed above the main living room on the south western side of the house.

The design of the property has been altered from that previously refused through its re-orientation and by the removal of the pitched roof and replacement with a flat roof. The proposed house remains large, with a south east frontage extending to 17m. This elevation would be most visible from public vantage points.

A new access would be formed from the unclassified lane to the north east.

ANALYSIS

Consideration and Assessment

The main issues to be considered are as previously, namely the principle of the development, and impact of the proposed dwelling on the character and appearance of the area, residential amenity, highway safety, ecology and any other material issues. In considering these it is necessary to explore whether the revisions to the design and form of the dwelling now proposed overcome the previous reasons for refusal.

Principle

The site lies in the open countryside where Strategy 7 of the EDDC Local Plan permits new development in the countryside but only where it accords with a specific local or neighbourhood plan policy and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located.

Policy H6 - Replacement of Existing Dwellings in the Countryside of the East Devon Local Plan states that proposals for the replacement of an existing permanent habitable dwelling outside of the built up area boundaries will be permitted where there are not restrictive occupancy ties; the replacement is located on or adjacent to the footprint of the existing; the replacement dwelling does not detract from the appearance and character of the landscape; and the dwelling to be replaced is not of architectural importance or important in terms of contributing to landscape character or quality or local distinctiveness.

Bearing the above in mind, there is no objection to the principle of a replacement dwelling subject to its design, scale and form being appropriate to its location.

Impact on surroundings

The application site occupies a prominent position on a plateau within an area of open countryside and the existing bungalow is clearly visible from various vantage points, particularly public views from the A376. The proposed dwelling, as previously, would be more prominent, partly due to the significantly larger building proposed in terms of width, height and bulk, but also due to the more central positioning within the site. The application site occupies the highest point in the immediate vicinity, and whilst this affords wide reaching views from within it, it also results in the building being visible from the surrounding area.

The fact that the replacement building will be more visible is not in itself necessarily a reason for refusal, especially as a bespoke design of dwelling has been produced with a flat roof (save for the chimney). It is recognised that the proposal would have more of an impact than the existing through its bulkier form being approximately 1 metre higher than the existing bungalow and 17 metres wide on the elevation that would be most prominent (when travelling north on the A376) verses an elevation that is currently 9 metres in length. However, that being said the large proposed balcony at first floor level would mean that only 12.5 metres of building would be visible and from a relatively distant transitory view. This means that approximately only an addition 3.5m at first floor would be viewed from the A376.

Furthermore, the use of traditional materials such as timber boarding at first floor level as opposed to render would aid in assimilating the proposal into its surroundings;

notwithstanding the details of materials indicated on the plans, the exact materials and their location on the dwelling should be dealt with via a pre-installation condition.

The application site also lies within a 'Green Wedge' under Strategy 8 of the adopted Local Plan. The policy and designation seeks to prevent coalescence of settlements and maintain open land between them. As such, development that would add to sporadic or isolated development or damage the identity of a settlement, or lead to or encourage settlement coalescence, will not be permitted.

As the proposal is seeking consent to replace an existing dwelling on the existing site, it is not considered that the proposal could be successfully argued to add to existing sporadic development, damage the identity of a settlement or increase coalescence. The proposal is not therefore in conflict with Strategy 8.

Although the application proposes a larger replacement dwelling to that currently on site, this is permitted by Policy H6 as long as the visual impact from the new dwelling is not detrimental. Whilst larger, given the orientation of the dwelling, such that the recessed balcony will reduce the bulk of the building when viewed from the A376, and provision of a flat roof, it is considered that it would be difficult to argue that the proposal is harmful to the wider character and appearance of the area, particularly as the key public view is from the A376 at distances in excess of approximately at 120m. It is therefore considered that the application has overcome the previous reason for refusal.

Impact on residential amenity

The foremost impact from the proposed replacement dwelling would be on the living conditions of the occupiers of the property known as 'Mount Grindle' which lies to the north east of the site. The proposed replacement would front onto a lane which runs between the two properties and have views over the access, driveway and front portion of the aforementioned property's garden, where as the existing dwelling is side on to the lane. The distance between the two dwellings would be 44 metres (at the closest point) and whilst the application site is elevated about 'Mount Grindle' it is considered that there would not be a detrimental level of overlooking as a result of the proposal. This is on the basis of the distances involved and given that the window serving bedroom 3 on the north east elevation is a high level window which can be secured through an appropriately worded condition.

There are other residential dwellings in the vicinity of the site, but none that would be directly impacted upon as a result of this proposal.

The development is therefore considered to comply with this element of Policy D1 of the EDDC Local Plan.

Impact on highway safety

There is an existing dwelling on site that is accessed from the minor road leading from the main A376 Exmouth to Exeter public highway; there would be no material intensification of this access to serve one dwelling. There would be on-site parking and turning via a new access from the minor road. It is considered, subject to

conditions, that the creation of the new access and use of the existing access onto the main A376 is considered acceptable in relation to Policy TC7 of the EDDC Local Plan.

Ecology

A wildlife survey of the existing bungalow has been carried out of the roof space, no evidence of bats or other protected species were found at the time of the survey and it is stated that the property provides negligible roosting potential and suitability.

The existing hedgerows have the potential to support nesting birds and dormice, however the report concludes that providing the hedgerows are removed at an appropriate time of year i.e between August and the end of February, the proposal would not detrimentally impact on protected species.

The development shall proceed in accordance with the recommendations as set out in the wildlife report.

The proposal is considered acceptable in relation to Policy EN5 (Wildlife Habitats and Features) of the EDDC Local Plan.

Landscaping

No information has been submitted in respect of landscaping, however, it is considered that these details can be secured through an appropriately worded planning condition. Additional landscaping over and above that already in place on site would further aid in the assimilation of the development into its surroundings.

Conclusion

The application proposed a replacement dwelling on the site and seeks to address the reason for refusal on a previous application through the re-orientation of the site and provision of a flat roof rather than a pitched roof.

The provision of a replacement dwelling is acceptable in principle and it is not considered that the proposal would harm the purposes of the Green Wedge within which it is located.

With suitable distances to the closest residential properties, suitable access and ecological matters covered by condition, the key consideration is whether the visual impact of the proposal is acceptable.

Whilst a much larger replacement dwelling is proposed, its revised orientation and provision of a flat roof will reduced the visual impact on the dwelling from the main public view points on the A376.

Subject to the use of suitable materials, it is considered that the slightly greater bulk of the building is not such that it would result in harm to the visual amenity of the area such that a refusal of planning permission could be justified.

RECOMMENDATION

Approve subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
3. Notwithstanding the details provided no development shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority; such a scheme to include the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed. The scheme shall also give details of any proposed walls, fences and other boundary treatment. The landscaping scheme shall be carried out in the first planting season after commencement of the development unless any alternative phasing of the landscaping is agreed in writing by the Local Planning Authority and the landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.
(Reason - To ensure that the details are planned and considered at an early stage in the interests of amenity and to preserve and enhance the character and appearance of the area in accordance with Policies D1 - Design and Local Distinctiveness and D2 - Landscape Requirements of the Adopted East Devon Local Plan 2013-2031.)
4. Development shall proceed in accordance with the recommendations as set out in Section 6 of the Preliminary Ecological Assessment dated 2nd December 2016, with particular reference to no hedgerow works other than between August and February.
(Reason: To ensure that protected species are protected during the redevelopment period in accordance with Policy EN5 (Wildlife Habitats and Features) of the East Devon Local Plan).
5. Notwithstanding the details provided, no development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
(Reason - To ensure that the materials are considered at an early stage and are sympathetic to the character and appearance of the area in accordance with Policy D1 - Design and Local Distinctiveness of the Adopted New East Devon Local Plan 2016.)

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no works shall be undertaken within the Schedule 2 Part 1 Classes A, B, or E for the enlargement, improvement or other alterations to the dwelling hereby permitted, other than works that do not materially affect the external appearance of the buildings, or for the provision within the curtilage of any building or enclosure, swimming or other pool, [other than any enclosure approved as part of the landscape management scheme]
(Reason - The elevated nature of the site would mean that extensions or outbuilding may have a detrimental impact on the character and appearance of the surroundings or to the amenities of adjoining occupiers in accordance with Policy D1 - Design and Local Distinctiveness of the Adopted New East Devon Local Plan 2016.)

7. A Construction and Environment Management Plan must be submitted to and approved by the Local Planning Authority prior to any works commencing on site, and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters : Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site.
(Reason: To ensure that the details are agreed before the start of works to protect the amenities of existing and future residents in the vicinity of the site from noise, air, water and light pollution in accordance with Policies D1 - Design and Local Distinctiveness and EN14 - Control of Pollution of the Adopted New East Devon Local Plan 2016.)

8. Notwithstanding the details provided the window serving bedroom 3 (as indicated on drawing nos. PFFP/RDH/2017 A 2 and PEE1/RDH/2017 A 3 received on 18.12.2017) shall be a high level window with the cil level being at least 1.7 metres above the floor level of the room it serves.
(Reason: To ensure that the privacy of the occupiers of the property known as 'Mount Grindle' is maintained in accordance with Policy D1 - Design and Local Distinctiveness of the East Devon Local Plan).

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council works proactively with applicants to resolve all relevant planning concerns; however, in this case the application was deemed acceptable as submitted.

Plans relating to this application:

A1	Proposed Floor Plans	18.12.17
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A2	Proposed Floor Plans	18.12.17
A3	Proposed Elevation	18.12.17
A4	Proposed Elevation	18.12.17
A6	Proposed roof plans	18.12.17
A7	Location Plan	18.12.17
A8	Proposed Site Plan	18.12.17

List of Background Papers

Application file, consultations and policy documents referred to in the report.

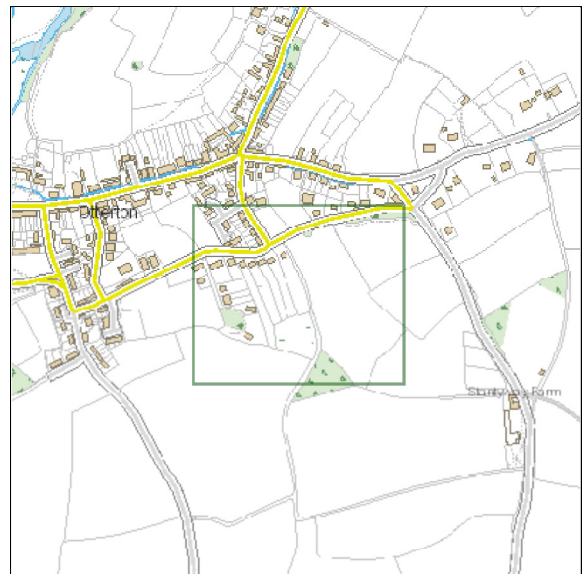
Ward Raleigh

Reference 17/2647/RES

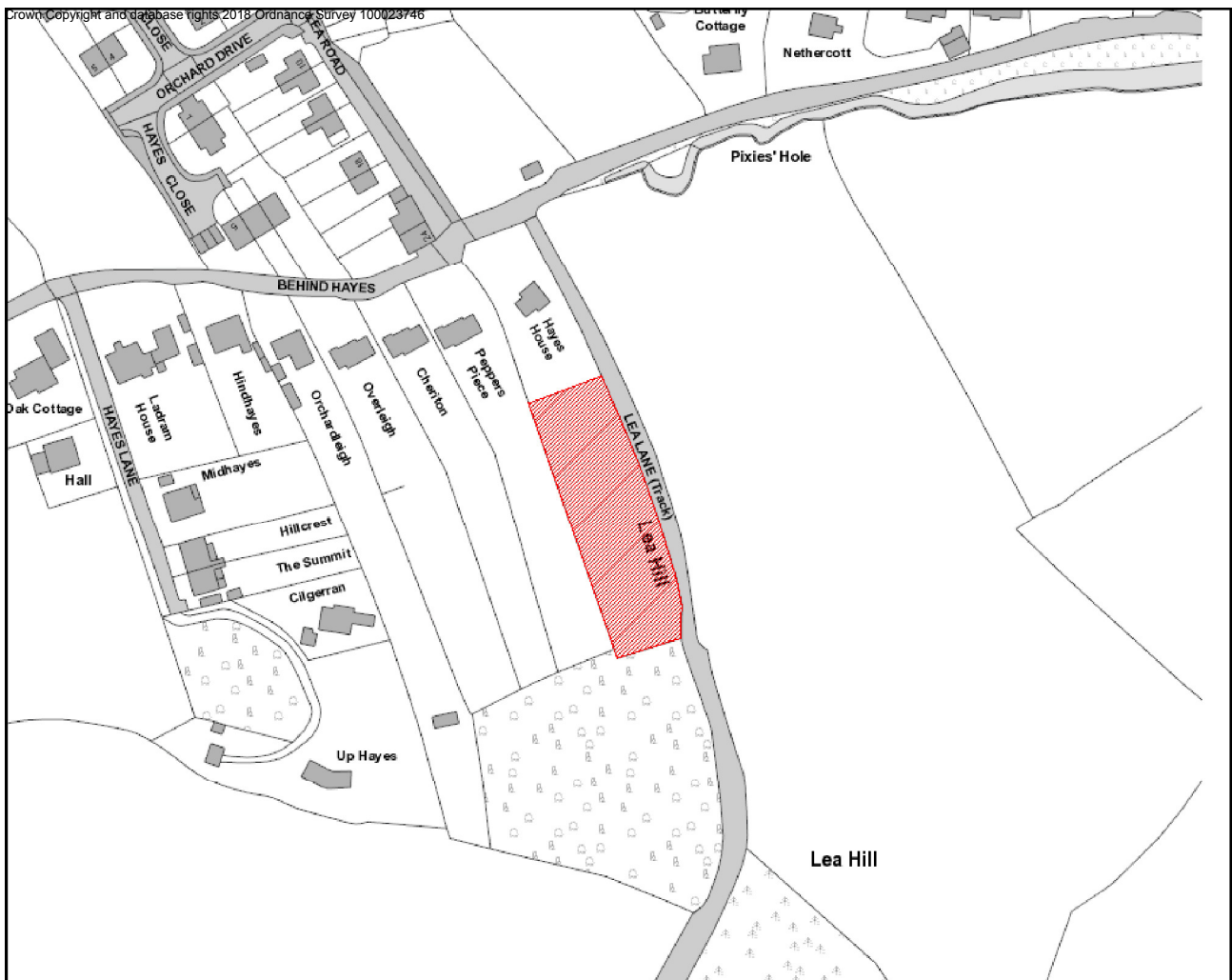
Applicant Mr & Mrs Pettit

Location Hayes House Behind Hayes Otterton Budleigh Salterton EX9 7JQ

Proposal Construction of dwelling and double garage and formation of new vehicular access (approval of all matters reserved pursuant to outline permission 14/2122/OUT)



RECOMMENDATION: Approval with conditions



		Committee Date: 6th March 2018
Raleigh (OTTERTON)	17/2647/RES	Target Date: 01.01.2018
Applicant:	Mr & Mrs Pettit	
Location:	Hayes House Behind Hayes	
Proposal:	Construction of dwelling and double garage and formation of new vehicular access (approval of all matters reserved pursuant to outline permission 14/2122/OUT)	

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

This application is before the Development Management Committee because the officer recommendation differs from the view of the Ward Member.

Following the grant of outline planning permission in 2015, this application represents a reserved matters proposal for the erection of a dwelling and double garage and the construction of an access. Outline consent was granted when the site was within the built-up area of Otterton. Since then, the new local plan has been adopted and Otterton no longer has a built-up area boundary. However, given this is a reserve matters application following the grant of outline consent, the principle of a dwelling on this site is acceptable and established. Consideration of the application therefore falls to the details of the proposal and compliance with relevant conditions on the outline consent.

The proposal was amended during the consideration of this application to reduce the size of the proposed dwelling and to move it further from the curtilage boundary with Peppers Piece. Given this, and an acceptable windows arrangement facing that property and Hayes House, it is considered that the proposal would not result in a loss of neighbour amenity.

It is considered that the proposal complies with the conditions on the outline consent, particularly the need for a single-storey or chalet style property, and as such the proposal is acceptable in terms of its compliance with the outline permission.

Given the location of the site, where the proposal would be screened by trees/hedges, or the topography of the area, from some directions, or would be read in conjunction with the near-by properties, it is considered that, on balance, the proposal would not be harmful to the AONB.

In terms of access to the site, Lea Lane is a public highway, and no concerns to the proposal have been raised by the County Highway Authority.

Given the above, it is considered that the proposal is acceptable and, therefore, it is recommended that this application is approved.

CONSULTATIONS

Parish/Town Council

- Highways have stated an objection regarding green lane. Planning does not include access on un-metalled road.
- Initial application thought to be fraudulent as application spans the building line. Reiteration that planning application is contradictory as it is building in open countryside.
- Sue McGregor, who lives next door to the site asked for photos to be submitted which shows that site will look as if property will be in her garden, building is too close to her property.
- The Parish Council unanimously voted against the application.

Further comments 22/01/18:

Otterton Parish Council unanimously objects to this proposal.

a. The size of the footprint (1900 sq ft) was the figure drawn from the original Planning Application in 2014. The current plan is for a much larger building (3435 Sq ft). It would appear that the Developer is trying to maximise his investment by building a house filling almost all of the available land lying north of the Planning Officer's interpretation of the Building Line. In the amended Plan the roofline has been lowered, but the floor plan is unchanged.

b. The issue of the location of the BUAB is critical because we believe that the projected site lies outside the permitted area. Our reasons for this are spelt out in great detail in the Council letter dated 11 Dec 2014 to the Head of the Planning Department. However since the BUAB no longer exists, the site is now in "Open Country". Councillor Tony Bennett intends personally to lodge an objection based on the Building Line.

c. The Highways response to the original application is set out in the notes to the 18 Nov 2014 Agenda for the Development Management Committee. Use of the lane during construction was permitted but it was proposed that Lea Lane should be photographed before any construction takes place and restored on completion of the work. The surface was to remain as a lane and is therefore unsuitable as access for this development.

d. Since the Outline Planning has been approved, it may be difficult to declare that construction should not be permitted. However it is still worthwhile to show that the development should never have been approved and it should be possible to limit the development to that already agreed. This was specified in condition 9, which stated "single storey or chalet style bungalow".

The Parish Council find the Plans are extremely difficult to unravel on line, but it would appear that it is still intended to build a substantial house with a double garage, which

far exceeds the Outline Plan. Therefore the objection of the Parish Council to both the original and the amended plans still stand.

County Highway Authority

Observations:

The Local Planning Authority has contacted the County Highway Authority (CHA) in respect of this application because of their concerns regarding the nature of the existing highway, Lea Lane, that is the proposed access to the development. Normally the LPA alone would deal with this level of development under Standing Advice.

Whilst Lea Lane is an adopted highway, it is the lowest form of adopted highway, Category 12. This means that the highway has an un-metalled surface that is porous and easily eroded nor does it have any positive drainage. Such highways are intended for agricultural access to fields and farmsteads, they are not intended as through-routes for general traffic, they are intended for limited motorised vehicular use, equestrian and recreational use only. The usual motorised use is mainly for agricultural traffic. Because of the nature of the construction of such highways they are susceptible to over use and their poor drainage make them weak in winter; however this is not a problem for tractors and four-wheeled-drive vehicles that are common on most farms and for access to fields.

As with the maintenance of all the highways undertaken by the CHA, a balance has to be struck between the various categories of highway and the amount of the county's maintenance budget available to be spent on them. This is especially true in times of recession, and at present Category 12 highways are only being maintained to Bridle Way standards. This involves very some minor repairs to ensure that the surface is suitable for walking, horse riding, horse-leading and some off-road cycling. The maintenance and cutting of hedgerows is undertaken by the be the adjoining landowners.

Because this Category 12 highway is the proposed access to the new property, even for a small length. The applicant should be aware of the current low maintenance regime that is afforded to Lea Lane and that the CHA does not have any intention to up-grade this highway or improve the level of maintenance and this will remain the case should this application be granted and the proposal implemented.

The category of Lea Lane (Adopted Highway-Category 12) prevents the CHA from stopping further access by vehicles, but it does have concerns that the proposed development may cause excessive damage to the fabric of the highway especially in the construction phases; however it would be impracticable to restrict vehicular movements to the proposed development site. Therefore the CHA proposes that should this application be granted, prior to any construction, Lea Lane up to the development site entrance, is examined and photographic evidence is obtained of its condition. Also at the end of the construction phases further examinations of the lane is undertaking to ascertain whether any damage has been caused by the development construction traffic. Should damage occur beyond that which is expected under normal wear and tear for the type of traffic expected on this highway, the applicant will made responsible for its repair.

Also the applicant should be made aware that access to the proposed property after completion the development by domestic vehicles would not be subject to the usual expectations of the road users' in that their vehicle may be subject to damage from pot holes, flooding and freezing and of values skid resistance that would far below those acceptable on higher categories of highway. The CHA will not be held responsible for any damage to any vehicle as a result of this application.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, RECOMMENDS THAT THE FOLLOWING CONDITIONS SHALL BE INCORPORATED IN ANY GRANT OF PERMISSION

1. Prior to commencement of development on any part of the site, the Local Planning Authority shall have received and approved a pre start condition report including photographs of Lea Lane from its junction with the connecting unclassified county road to the site entrance.

REASON: To provide accurate records of the state of highway from its junction with the unclassified road and the site access entrance as far as the site construction traffic is concerned and to control any undue wear and tear to this highway brought about by construction traffic in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.

2. Within 3 months of completion of the development, all defects/damage to Lea Lane from the junction with the unclassified road and the site entrance resulting from the development hereby approved construction shall be made good at the developer's expense and the Local Planning Authority shall have received post construction survey report including photographic evidence of that length of highway.

REASON: To provide accurate records of the state of highway from its junction with the unclassified road and the site access entrance as far as the site construction traffic is concerned and to control any undue wear and tear to this highway brought about by construction traffic in accordance with Policy TA7 (Adequacy of Road Network and Site Access) of the East Devon Local Plan.

Raleigh - Cllr G Jung

I have reviewed Planning Application 17/2647/RES for a new detached dwelling, double garage and access to highway on land to the rear of Hayes House. Behind Hayes. Otterton, Budleigh Salterton EX9 7JQ.

Please note condition 9. from the outline planning permission which states:

"The development hereby permitted shall take the form of a single storey dwelling or chalet style bungalow. For the avoidance of doubt, this may incorporate the provision of accommodation within the roof space but must ensure that the eaves line sits below all first-floor windows.

(Reason - In the interests of the appearance and character of the area and to restrict the height of the development to protect the amenities and privacy of adjoining occupiers in accordance with Policy D1 (Design and Local Distinctiveness))

My comments

This seems to be a large two storey building on the edge of the village near to more modest properties on rising land and will adversely disrupt the view from a most popular and public Green Lane within the AONB.

I do not consider it complies with the condition 9 of the Outline Planning permission as the eaves line does not sit below all first-floor windows as required.

My comments from the previous application still stand regarding the Green Lane access.

If this application is approved I am most concerned with the access to the site being little more than a footpath. It is however designated as a Green Lane and therefore vehicles are permitted.

It is muddy and liable to flooding and allowing surface water to flow onto to other lanes during a storm event in winter months.

This extensive, executive, large house with have to be approached along a narrow unmade narrow steep track which will be severely damaged by construction vehicles during construction. Once the house is completed their will be a temptation for the residents to "improve" this lane thus creating a more urban approach which would destroy the rural nature of the country lane which is popular for local people and visitors to access the coastal walks beyond.

Therefore, a condition needs to be applied if the application is approved to protect and ensure to return the lane to its rural nature and repair any damage and not to "improve" the lane in the future.

Also a condition that the rural hedge bordering the lane and new property should remain a rural native species hedge that must be retained.

Please note, these are my preliminary views taking account the information presently made available. I will reserve my final view on this application until I am in possession of all the relevant arguments for and against.

Further comments 23/01/18

I have viewed the new documents for 17/2647/RES for the construction of dwelling and double garage and formation of new vehicular access (approval of all matters reserved pursuant to outline permission 14/2122/OUT) at Hayes House Behind Hayes Otterton Budleigh Salterton EX9 7JQ.

The Parish Council and many residents including close neighbours are not supportive of this development. Many of the concerns relate to the granting of outline permission some years ago.

Why and how this plot was given permission is not a matter for this reserved matter application as there is an approved outline planning application and therefore there is a presumption that a building is able to be built at this location.

When the outline application in January 2015 was granted which was prior to the Local Plan being adopted there was a BUAB (Built Up Area Boundary) around the village,

but the local plan has now removed the BUAB from Otterton and all development within the Village of Otterton is to now consider development in the "open countryside". Therefore, the starting point for this application is that outline planning permission for a house in the open countryside is permitted on this site.

But only if the reserved matter application conforms to the description and conditions within the outline planning application and conforms to National Planning Policy then there is a presumption in favour of development this development.

The description for the 2014 outline states:

Construction of dwelling and detached double garage and formation of new vehicular access (Outline application reserving details of layout, scale, appearance, access and landscaping).

Note that there is no statement on the scale of the new proposed dwelling, in the outline approval. However, the documents for the Outline Application states "The proposal is for a single reverse level detached dwelling circa 1900sq foot together with a detached double garage and new access onto Lea Lane.

The new proposal is somewhat larger than the original proposal.

Conditions Attached to the Outline.

1. The approval of the details of the layout, scale, landscaping and appearance of the buildings and the means of access thereto (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

The principle of access off Lea Lane was stated in the outline application and therefore the layout scale, landscaping and appearance are needed to be considered.

However, the access though stated in the applicants documents it was not determined in the outline permission and therefore access to the new property has to be agreed with this reserved matter application.

4. No development shall take place until details of final finished floor levels and finished ground levels in relation to a fixed datum have been submitted to and approved in writing by the Local Planning Authority. Such details shall include ground floor, eaves and ridge heights for Hayes House to allow comparison between the existing and proposed dwellings. Development shall be carried out in accordance with the approved details.

The details are included within the application and these need to be considered if they are appropriate

5. No building hereby permitted shall be constructed south of the line defined by the Built up Area Boundary in the East Devon Local Plan 1995 to 2011.

It is claimed that this condition has been achieved in the proposal though the BUAB has now been totally removed from the village.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification) no windows, doors, rooflights or other openings other than those approved in any subsequent reserved matters application shall be formed in the north and west elevations of the buildings hereby permitted.

This has not been achieved as there are windows on the ground floor facing West and rooflights also facing West

7. No development shall take place until details of a sustainable drainage scheme for the site have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

This should be achieved before planning is approved but could be provided afterwards with a condition included in the full condition

9. The development hereby permitted shall take the form of a single storey dwelling or chalet style bungalow. For the avoidance of doubt, this may incorporate the provision of accommodation within the roof space but must ensure that the eaves line sits below all first floor windows.

The amended plans do achieve this.

Conclusion

The application is a larger dwelling as stated in the outline proposal, and I believe the scale and position of this dwelling appears "over dominant" on its neighbouring properties as the plot is higher than its neighbours and very close to their boundaries.

The Green Lane that is proposed to be used for access will be damaged during construction and though DCC Highways insist it will be returned to its natural state it will never truly be the same as before as it will be in constant use by vehicles entering and exiting the property therefore destroying the original nature and look of this ancient byway.

The main issue is that there are windows and rooflights facing west which means the building does not comply to all the conditions attached to the outline.

I therefore cannot support this planning application.

If this Planning Application is approved I would ask for the very stringent conditions proposed by Highways to protect Ley Lane, and conditions to remove permitted development rights from any further development to protect the amenity of the area on the North and West of the property.

I will reserve my final views on the application until I am in full possession of the relevant arguments for and against.

Further comments 26.01.18

I have reprinted condition 6.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification) no windows, doors, rooflights or other openings other than those approved in any subsequent reserved matters application shall be formed in the north and west elevations of the buildings hereby permitted.

(Reason - To protect the privacy of adjoining occupiers in accordance with policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan.)

Thank you pointing that the condition is in effect taking away the development rights for any subsequent application for further windows on these 2 elevations. However the condition provides a clear indication that windows on these 2 elevations are of major concern.

I am not concerned with the ground-floor windows, as a boundary fence or hedge will protect the overlooking but I still do have concerns regarding bedroom 3 window which will be looking down on the next door properties windows. If this could be overcome by changing the interior layout to swap over the bathroom and bedroom 3 and the roof window then can be opaque as it would be the bathroom.

However I would still have a concern of the over dominance of the property as it sites very high on the plot. As shown on the plans the roof line of the house is much higher than the single story roof pitch of the garage. This is due to incorporating a second story with the rising landform.

Other Representations

A total of 26 objections have been received. Concerns relating to the following are raised in these:

- Site access on Lea Lane.
- The size of the proposed dwelling.
- The site is in the open countryside.
- The site is in the AONB.
- Where the property would be situated within the plot.
- Obstruction of Lea Lane during construction.
- Flooding.
- The property would be overbearing.
- Overlooking from the property.
- The dwelling would be larger than that permitted by the outline consent.

One letter of support was received. This was from the applicant and provided arguments to counter the objections to the proposal.

PLANNING HISTORY

Reference	Description	Decision	Date
14/2122/OUT	Construction of dwelling and detached double garage and formation of new vehicular access (Outline application reserving details of layout, scale, appearance, access and landscaping).	Approval with conditions	23.01.2015
17/1502/FUL	New detached dwelling, double garage and access to highway	Withdrawn	14.09.2017

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 3 (Sustainable Development)

Strategy 7 (Development in the Countryside)

Strategy 44 (Undeveloped Coast and Coastal Preservation Area)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

EN22 (Surface Run-Off Implications of New Development)

TC7 (Adequacy of Road Network and Site Access)

Government Planning Documents

NPPF (National Planning Policy Framework 2012)

Site Location and Description

This application relates to an area of land to the rear of Hayes House, which is situated on the edge of Otterton. Formally, the site formed part of the domestic curtilage of Hayes House. Access to the site is through a gateway off Lea Lane, which is an un-surfaced public road running to the east of the site. Lea Lane joins an unclassified, but surfaced, highway, known as Behind Hayes, to the north. There is a neighbouring property to the west, known as Peppers Piece. The site boundary consists largely of a hedge and/or trees on the eastern and western boundaries. To the north, there is a low fence and there is currently no boundary to the south (although, in this direction, the domestic curtilage formally associated with Hayes House extends further to the

south). The land rises to the east and south of the site, and drops slightly in other directions.

Like the whole of Otterton, the site lies within the East Devon Area of Outstanding Natural Beauty (AONB) and, under the current East Devon Local Plan (2013 - 2031), in the open countryside. Also, under the same plan, the Coastal Preservation Area adjoins the site to the south and also adjoins the opposite side of Lea Lane.

Proposed Development

This application is a reserved matters application for the construction of a dwelling and double garage, and the formation of a new vehicular access. This application follows on from the granting of application 14/2122/OUT, which was described as follows:

"Construction of dwelling and detached double garage and formation of new vehicular access (Outline application reserving details of layout, scale, appearance, access and landscaping)."

All matters were reserved as part of the outline application and as such this reserve matters application is seeking consent for the means of access, layout of the site, scale of development, appearance of the dwelling and landscaping of the site.

ANALYSIS

The main issues for consideration are the reserve matters of access, layout, scale, appearance and landscaping. In addition, given the objections received to the application consideration of the principle of the proposal and compliance with conditions imposed on the outline application will be addressed along with any impact upon the amenity of adjoining residents.

Principle of residential development

Outline consent was granted in January 2015 under the previous East Devon Local Plan, in which Otterton had a built up area boundary (BUAB) and within which the site fell. Given this, and notwithstanding that Otterton no longer has a BUAB under the current Local Plan, the principle of the development has been established and cannot be re-considered as part of this reserve matters application. Therefore, the fact that the site is outside any current BUAB is not a consideration in the determination of this application.

Compliance with conditions on the outline consent

When granted, the outline consent included a number of conditions. Some of those were there to control the nature of the development. These are considered as follows:

- Condition 5 of the outline consent states that no development shall take place south of the BUAB as it was defined on the previous Local Plan. The plans submitted with this application show that the proposed development would be within the former BUAB and, therefore, the proposal is acceptable in this regard.

- Condition 9 of the outline consent states:

"The development hereby permitted shall take the form of a single storey dwelling or chalet style bungalow. For the avoidance of doubt, this may incorporate the provision of accommodation within the roof space but must ensure that the eaves line sits below all first floor windows."

This condition is very clear in its requirements. Whilst it is accepted that the proposed dwelling is not a single storey dwelling, it is a form of chalet style bungalow having the appearance of a single storey dwelling with rooms in the roof. The condition allows rooms in the roof of the dwelling subject to the eaves line being below all windows. Following the submission of amended plans the building complies with this and, therefore, it is considered that the proposal is in accordance with this condition.

The remaining conditions attached to the outline consent were either compliance conditions or conditions which require information to be submitted to the Local Planning Authority (LPA) for consideration prior to the commencement of works. To date, none of this information has been received and, therefore, in the event that this application is approved, this information will remain outstanding and will need to be submitted for approval before development commences.

It is also noted that the outline consent withdrew permitted development rights for the insertion of any windows, other than those considered acceptable at reserved matters stage, on the northern and western elevations. In the event that this application is approved, that condition would remain valid for any new windows not shown on the submitted plans.

Layout, scale, appearance and landscaping

Some concerns have been raised by the public about the scale of the proposed dwelling and its location, in comparison to the details shown on the outline permission.

All matters were reserved on the outline consent and, consequently, any plans approved at outline stage, other than the location plan (drawing number 1-0001), were indicative only. Therefore, the size and location of the property were not agreed at outline stage and are matters for consideration in this report.

In this regard, concerns were raised by the occupiers of Peppers Piece about the proximity of the dwelling to the curtilage boundary with their property. In response to this, the applicants moved the proposed location of the dwelling further from the boundary and, in order to prevent the dwelling being any closer to Lea Lane, reduced the size of the dwelling. Matters of the impact of the proposal on the occupiers of Peppers Piece are considered below. However, in terms of the location of the dwelling in the site, it is considered to be acceptable; it complies with condition 5 of the outline consent.

The scale of the development is also considered to be acceptable in relation to the plot size. It complies with the provisions of condition 9 of the outline consent and would not be overly large in relation to surrounding dwellings with adequate amenity space and car parking provided.

Additionally, in order to ensure that the height of the proposed property is acceptable, condition 4 of the outline consent requires details of the finished floor levels to be submitted to, and agreed in writing by, the LPA prior to development. This condition would still stand in the event that this application is approved, and will serve to enable to LPA to further ensure that the height of the development is acceptable.

The lies in the East Devon AONB, open countryside (although, as stated above, outline consent was granted when the site was within the BUAB) and adjoins the Coastal Preservation Area (CPA). Therefore, it is important to ensure that the proposal is not harmful to these designations. To this end, condition 3 of the outline consent requires that samples of the materials to be used in the construction of the property must be submitted to, and approved by, the LPA prior to the commencement of development. This will give the LPA control over the materials used, to ensure that they are suitable for the location. The proposed design of the dwelling is fairly simple but acceptable with the application indicating the use of feature stonework, render, natural slate roof and powder coated aluminium doors and windows. These would be acceptable in context.

In terms of the visual impact of the proposal, it is accepted that there are some locations from which the dwelling would be visible. However, it is considered that, given the proximity of the site to other dwellings, from many directions the proposal would be read in conjunction with existing dwellings. This would minimise the visual impact of the proposal, especially when natural screening in the form of trees/hedges and the topography of the area are also taken into account.

The proposed property would be situated in the lowest part of the site, which would enhance the effectiveness of the screening. However, the curtilage of the property would extend up the hill to the south. Although this was formally part of the domestic curtilage associated to Hayes House, and, as a result there are some outbuildings on this land, it is considered that an additional dwelling would increase pressure for further outbuildings on this more visible part of the site. Therefore, it is considered reasonable to impose a condition withdrawing permitted development rights for Class E (erection of outbuildings, pools and containers) of The Town and Country Planning (General Permitted Development) (England) Order 2015. This would enable the LPA to retain control of any outbuildings and similar structures proposed on the site to ensure that they are in a location which is not visually harmful.

Given the above, and as the principle of the proposal is considered acceptable, it is considered that the proposed development could be undertaken without causing visual harm to its setting or AONB.

Neighbour Amenity

The site has two immediately adjoining properties; Peppers Piece to the west and Hayes House to the north.

In terms of the impact in Peppers Piece, it is considered that, like most development, the proposal would result in a change in outlook. However, its location is such that it would be around 2.4 metres from the boundary hedge in a position which is not directly

opposite the actual dwelling at Peppers Piece or adjoining the main amenity area to the immediate rear of the dwelling. There is a significant boundary hedge and a tree close to that within the garden of Peppers Piece. Given this, and the height of the proposed dwelling, it is considered that it would not be overbearing on the garden of Peppers Piece, or upon the dwelling itself. The neighbours' concerns about a loss of light in the garden are noted. However, whilst there would be some impact in this regard, the proposed dwelling would be situated alongside a small part of the garden, leaving the majority of the garden, include the main amenity area to the immediate rear of Pepper Piece with unrestricted light from other directions. Therefore, it is considered that a refusal of planning permission could not reasonably be sustained on these grounds.

The occupiers of Peppers Piece have also raised concerns about overlooking. However, it is considered that the dwelling has been designed to ensure that overlooking would not arise. The proposed rooflights on the western elevation would, as confirmed by the agent acting for the applicant, be 1670mm above the floor level in bedroom three. This is considered to be an acceptable height as with the main outlook from those windows being upward, rather than down into neighbouring gardens. The other rooflights on the western elevation would be over a stairwell and consequently, it is considered that no amenity issues would arise from them. The height of these windows above floor level can be conditioned.

There would be ground floor openings on the western elevation. However, these would be screened by the boundary hedge.

In terms of the impact on Hayes House, there would be windows facing toward Hayes House. However, it is considered that these would be a sufficient distance (in excess of 21m) from that property to ensure that no amenity issues would arise.

Given the above, and taking into account the permitted development rights withdrawn at outline stage, it is considered that the proposal is acceptable in terms of its impact upon the occupiers of neighbouring properties.

There are no other neighbouring properties which are considered to be close enough to the site for the proposal to give rise to any amenity loss to the occupiers of those.

Means of access

It is proposed to use Lea Lane to access the site. This is an un-surfaced public road, which is used mainly for walking, running, mountain biking and horse riding. The County Highway Authority (CHA) refer to Lea Lane as follows:

"Whilst Lea Lane is an adopted highway, it is the lowest form of adopted highway, Category 12. This means that the highway has an un-metalled surface that is porous and easily eroded nor does it have any positive drainage. Such highways are intended for agricultural access to fields and farmsteads, they are not intend as through-routes for general traffic, they are intended for limited motorised vehicular use, equestrian and recreational use only. The usual motorised use is mainly for agricultural traffic. Because of the nature of the construction of such highways they are susceptible to over use and their poor

drainage make them weak in winter; however this is not a problem for tractors and four-wheeled-drive vehicles that are common on most farms and for access to fields."

Given the above the CHA then continues to state:

"The category of Lea Lane (Adopted Highway-Category 12) prevents the CHA from stopping further access by vehicles, but it does have concerns that the proposed development may cause excessive damage to the fabric of the highway especially in the construction phases; however it would be impracticable to restrict vehicular movements to the proposed development site."

Following the above comments, the CHA has recommended two conditions to impose should this application be approved. They would require an assessment of the track prior to any works taking place and, following completion, a further assessment with any additional defects repaired at the cost of the developers. Such conditions are considered reasonable in this instance and, in the view of the LPA, are sensible conditions to impose given that the classification of the highway means it is not possible to prevent vehicular access along it.

With regard to the access from Lea Lane onto Behind Hayes, it is considered that Behind Hayes is a very lightly used road. Given this, and that the number of vehicular movements from the proposed dwelling would be small, it is considered that this element of the access does not give rise to any concerns.

Given the above comments, it is considered that the proposal is acceptable with regard to highway matters.

Other matters

Many comments have been received from interested parties and individuals. The majority of their comments are considered above. However, those elements not mentioned above are covered below:

- Concerns are raised that the proposal would lead to flooding along Lea Lane and in the surrounding area. However, condition 7 of the outline consent requires details of a sustainable drainage system to be submitted to, and approved by, the LPA prior to the commencement of development. This condition would still stand, and is considered to be appropriate.

- Concerns have been raised about Lea Lane being obstructed during construction. Such matters would be a civil, or possibly police, matters and are not a planning consideration.

Conclusion

Given the comments raised above, it is considered that the proposal is acceptable. Therefore, it is recommended that this application is approved, subject to the

conditions mentioned above, and those imposed on the outline consent which are still to be discharged.

RECOMMENDATION

APPROVE subject to the following conditions:

1. East Devon District Council as Local Planning Authority HEREBY APPROVE THE FOLLOWING RESERVED MATTERS of the above described development proposed in the application numbered as shown above and in the plans and drawings attached thereto:-
 - (a) Appearance
 - (b) Landscaping
 - (c) Layout
 - (d) Scale
 - (e) Access

This Reserved Matters application numbered as shown above is made pursuant to the Outline Planning Permission 14/2122/OUT granted on 23/01/15.

The following reserved matters have yet to be approved:

None

The following Conditions attached to the Outline Planning Permission (ref. no. 14/2122/OUT), referred to above, remain to be complied with on site but without the need for the submission of details or separate agreement:

2 (with regard with the need to commence development within 2 years of the date of this decision notice)

The following Conditions attached to the Outline Planning Permission (ref. no. 14/2122/OUT), referred to above, remain to be complied with where details are required to be submitted prior to the commencement of development:

3, 4, 7.

2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
3. Prior to commencement of development on any part of the site, the Local Planning Authority shall have received and approved a pre start condition report including photographs of Lea Lane from its junction with the connecting unclassified county road to the site entrance.
(Reason: To provide accurate records of the state of highway from its junction with the unclassified road and the site access entrance as far as the site construction traffic is concerned and to control any undue wear and tear to this highway brought about by construction traffic in accordance with Policy TC7

(Adequacy of Road Network and Site Access) of the Adopted East Devon Local Plan 2013-2031, as well as guidance contained within the National Planning Policy Framework.)

4. Within 3 months of completion of the development, all defects/damage to Lea Lane from the junction with the unclassified road and the site entrance resulting from the development hereby approved construction shall be made good at the developer's expense and the Local Planning Authority shall have received post construction survey report including photographic evidence of that length of highway.

(Reason: To provide accurate records of the state of highway from its junction with the unclassified road and the site access entrance as far as the site construction traffic is concerned and to control any undue wear and tear to this highway brought about by construction traffic in accordance with Policy TC7 (Adequacy of Road Network and Site Access) of the Adopted East Devon Local Plan 2013-2031, as well as guidance contained within the National Planning Policy Framework.)

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no works within the Schedule Part 1 Class E for the provision within the curtilage of the dwellinghouse hereby permitted of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouses as such.

(Reason - To protect the character and appearance of the area in accordance with Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policy D1 (Design and Local Distinctiveness) of the Adopted East Devon Local Plan 2013-2031, as well as guidance contained within the National Planning Policy Framework.)

6. All the windows shown on the South West facing elevation at first floor level on the plans hereby permitted shall be a minimum height of 1.7 metres above the finished floor level and shall be retained as such thereafter.

(Reason - To protect the privacy of adjoining occupiers in accordance with Policy D1 – Design and Local Distinctiveness of the Adopted New East Devon Local Plan 2016.)

NOTE FOR APPLICANT

Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

Plans relating to this application:

17019.39 REV C Proposed Elevation 09.01.18

17019.38 REV A	Proposed Floor Plans	08.01.18
17019.40 REV A	Proposed Combined Plans	08.01.18
17019	Location Plan	06.11.17

List of Background Papers

Application file, consultations and policy documents referred to in the report.

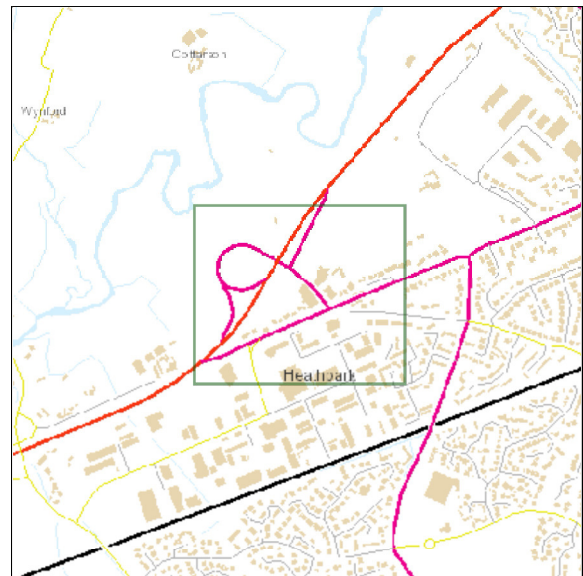
Ward Honiton St Michaels

Reference 17/2520/VAR

Applicant Aldi Stores Ltd

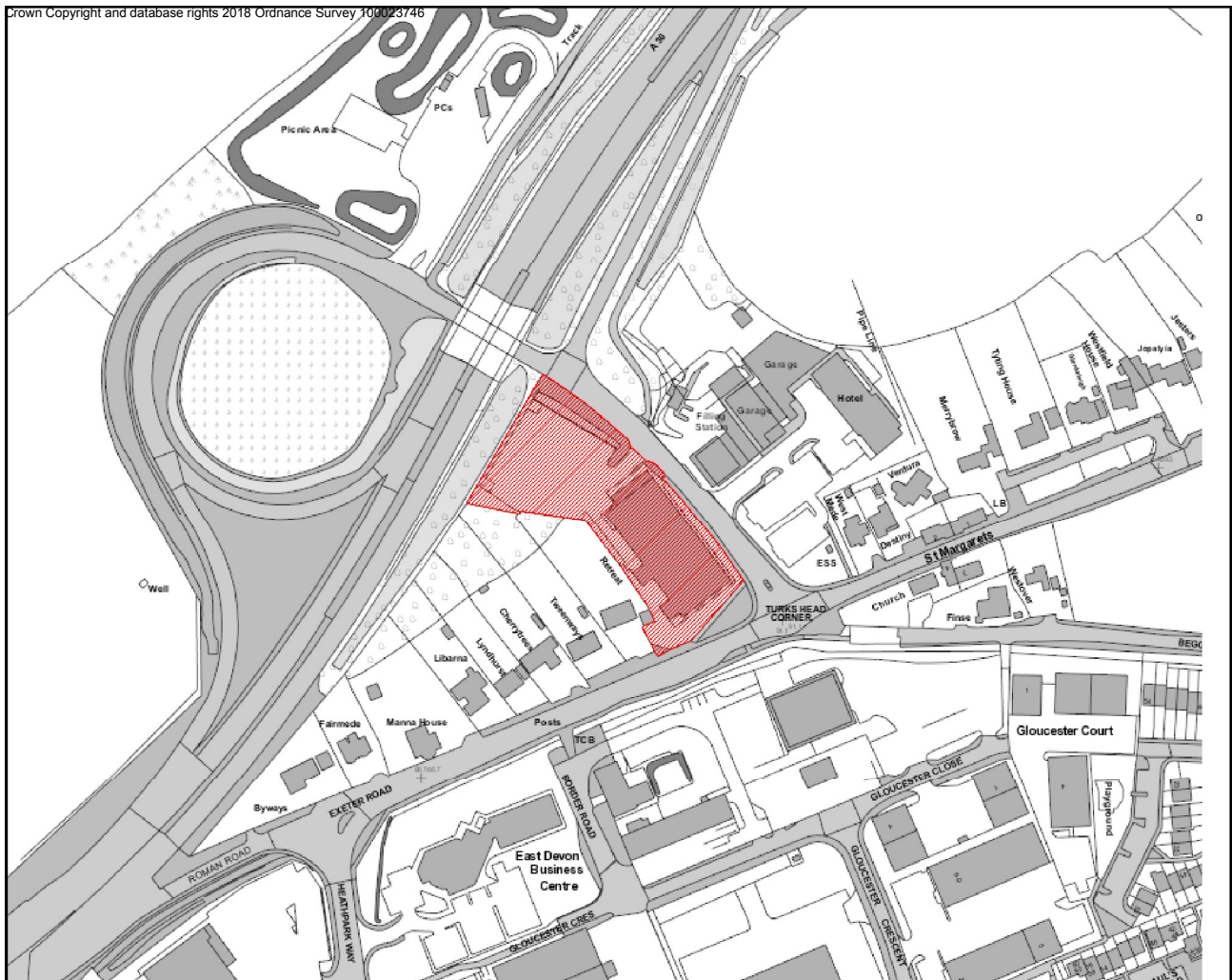
Location Aldi Exeter Road Honiton EX14 1AZ

Proposal Variation of condition 5 of planning permission 10/0312/MFUL (development of an 1,534 square metre gross (990 square metres net) Class A1 retail foodstore with associated access, car parking and landscaping) to permit delivery hours between 06:00 - 22:00 Monday to Saturday inclusive and between 09:00 - 18:00 on Sundays



RECOMMENDATION: Refusal

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		Committee Date: 6th March 2018
Honiton St Michaels (HONITON)	17/2520/VAR	Target Date: 23.01.2018
Applicant:	Aldi Stores Ltd	
Location:	Aldi Exeter Road	
Proposal:	Variation of condition 5 of planning permission 10/0312/MFUL (development of an 1,534 square metre gross (990 square metres net) Class A1 retail foodstore with associated access, car parking and landscaping) to permit delivery hours between 06:00 - 22:00 Monday to Saturday inclusive and between 09:00 - 18:00 on Sundays	

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

The application is before committee as it relates to a proposed variation to a major application where the officer view differs from that of the Town Council.

The application relates to the delivery times for the store which are currently restricted to between the hours of 07.00 and 20.00 Mondays to Saturdays and 09.00 to 18.00 on Sundays. The application seeks to extend the delivery times Monday to Saturday to allow them to begin an hour earlier and finish two hours later on those days.

The supporting information suggests that the proposed extension to the delivery times would improve the efficiency of the business in being able to re-stock the shelves at quieter times, or before the store opens.

The store has its delivery bay to its southwest side where it immediately adjoins the garden of the residential property, 'The Retreat'. The dwellinghouse itself is within approximately 13 metres, at its nearest point, of this part of the store.

The application is accompanied by a noise assessment report which seeks to compare delivery noise at other stores against the background noise levels at the site, it concludes that there would be no significant adverse impact resulting from the proposed extended delivery hours. The Council's Environmental Health team are familiar with the history of the site and have compared the most recent noise report with others submitted as part of earlier applications, which successfully sought to extend store delivery hours. They have raised concern that there are discrepancies between the two reports and that there is no site specific

monitoring of noise from the neighbouring residential property. They are concerned that without this demonstrating the actual impact of delivery noise, the proposed extended hours have the potential to significantly impact on the amenity of neighbouring occupiers and potentially disrupt sleep in the early hours or later in the evening.

The potential to carry out specific noise monitoring of delivery times from the neighbouring property have been discussed with the applicant but these have not been possible at present and they have requested the application is determined as submitted. As it stands insufficient information has been provided to demonstrate that the proposed extended delivery hours would not have a significant adverse impact on neighbouring occupiers, and as the store can operate within the currently approved hours, the application is recommended for refusal.

CONSULTATIONS

Local Consultations

Parish/Town Council

The Town Council unanimously supports this application

Technical Consultations

County Highway Authority

Looking at collision data there has only been one minor accident since the opening of the Aldi, I believe these additional delivery hours are outside the am and pm peak traffic movement hours.

The Sunday morning has been respected with a later start date of 9:00. I therefore have no objections to this development.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, HAS NO OBJECTION TO THE PROPOSED DEVELOPMENT

Environmental Health

Our concern is for the property immediately adjacent to the store, The Retreat, Exeter Road, Honiton EX14 1AZ.

From my discussion with Janet Wallace, who dealt with the original application to build the store, she originally recommended that the delivery bay should be sited on the opposite side of the building, i.e. furthest away from The Retreat and closer to the A30 slip road. Unfortunately the delivery bay was sited very close to the aforementioned property.

It should also be noted that the owner of The Retreat informed us in February 2015 that the noise from the pallet loaders within the lorries was loud and disturbing and made his dogs bark.

In order to assess the current application, all three noise reports were considered as the previous reports provide context and also shows differences within the reports including noise levels, calculation methodologies and assessment criteria.

Delivery noise - detailed breakdown

Entran 2015 report

Table 5 page 15 - provides a very detailed breakdown of delivery noise carried out elsewhere in 2010. This assessment provides a noise level of 47.8 dB.

Sharps Redmore 2017 report

Table 5 and 6, Page 14 - provides a less detailed breakdown of delivery noise carried out 'at a large number of ALDI stores. This assessment provides a noise level of 43 dB.

Thus we see a difference of $47.8 - 43 = 4.8$ dB between the two reports

Delivery noise - LAmax noise levels

Entran 2015 report

Table 4 page 12 - provides a very detailed breakdown of delivery noise carried out elsewhere in 2010. This assessment provides 4 LAFmax noise levels greater than 85 dB.

If we allow 12 dB attenuation for the noise barrier and 6 dB attenuation over distance, 3 of these levels are between approximately 70 to 71 dB.

Delivery noise - LAmax noise levels - Sharps Redmore 2017 report

Table 7 on Page 15 of the 2017 Sharps Redmore report indicates LAmax levels of 55-62

(at 18 Bruce Street) and paragraph 4.9 on Page 15 of the 2017 Sharps Redmore report states:

In the context of the predicted ambient noise levels and WHO guideline noise values the significance of the impact would be low for deliveries occurring from 0600 and 2200 Monday to Saturday. Although peak noise levels between 0600 and 0700 are slightly in excess of the WHO peak noise guideline value, the noise survey indicates existing peak noise levels at this time well above those predicted from delivery activity.

Thus we see a difference of $71 - 62 = 9$ dB between the two reports in terms of LAmax

Thus if using the Entran 2015 report levels for LAmax, peak noise levels are 10 dB over the WHO peak noise guideline value, which is a doubling of loudness, which is significant

None of the three reports present graphs of noise level over time during the course of an actual delivery and all the reports use calculations to predict the noise impact on the receptor. Essentially the noise is divided up into various components and then logarithmically averaged over the required time period.

This means that the "peaky nature" of a delivery is not properly accounted for.

The fact that the previous occupier could hear deliveries is also not considered.

It would appear from the differences between the current 2017 Sharps Redmore noise report and the 2015 Entran noise report, that night time noise from deliveries could affect sleep, based on the WHO guideline L_{Amax} night time noise value. This is of particular concern when considering the proposed 6am start time. Furthermore, L_{Amax} levels may also be intrusive from 2000 to 2200, when people are normally expecting to be able to relax and young children are likely to be in bed.

From my last visit to the site on 6 December 2017 a sign was outside the adjacent property stating "sale agreed".

We would therefore recommend that the application is deferred and an attended noise assessment is made from within the adjacent property when the new occupier moves in.

This would clarify the impact of deliveries on the new occupier.

We are not able to fully assess the impact on next door (though we suspect it may have a significant impact on the basis of the comments made by the previous occupier) and consequently can only recommend refusal at this time.

Other Representations

No comments received.

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies
Strategy 6 (Development within Built-up Area Boundaries)

D1 (Design and Local Distinctiveness)

EN14 (Control of Pollution)

Government Planning Documents
NPPF (National Planning Policy Framework 2012)
National Planning Practice Guidance

Site Location and Description

Aldi supermarket is sited at the northwest corner of the Turks Head junction to the west side of Honiton. Access to the store is from Turks Head Lane opposite Honiton Garage and Petrol filling station and the Premier Inn Hotel. To the south west of the

store are the properties known as Retreat, Tweenways and Cherry Trees, amongst others. To the southeast the site adjoins Exeter Road and the northwest, beyond the car park is the A30.

Proposed Development

The proposal seeks to amend condition 5 of planning consent 15/0039/VAR which reads;

No deliveries shall be taken at or dispatched from the site, including waste collection, except between 7:00am and 8:00pm on Monday to Saturday inclusive or between 9:00am and 6:00pm on Sundays.

(Reason - To protect adjoining occupiers from excessive noise.)

According to the submitted application forms the proposal seeks to add an additional hour to delivery times in the morning and two hours in the evening, these extended delivery periods would apply only to Mondays to Saturday with Sunday delivery times unaltered. As such the proposed varied condition would read;

No deliveries shall be taken at or dispatched from the site, including waste collection, except between 6:00 and 22.00 on Monday to Saturday inclusive or between 9:00 and 18.00 on Sundays.

(Reason - To protect adjoining occupiers from excessive noise.)

Background and History

The application for the retail food store was originally granted in 2010. At the time the hours of delivery were restricted as follows:

Only between 7:00am and 8:00pm on Monday to Saturday inclusive or between 9:00am and 5:00pm on Sundays.

A subsequent permission in 2015 granted a variation to the delivery times, allowing an additional hour on Sunday evenings to their current status, as follows:

Only between 7:00am and 8:00pm on Monday to Saturday inclusive or between 9:00am and 6:00pm on Sundays.

ANALYSIS

The application does not propose any other changes to the development approved under application 10/0312/MFUL (as varied under 15/0039/VAR) other than to permitted delivery times. The highways authority has confirmed that as the proposed changes are outside peak traffic hours they have no concerns with regard to the application. As such the principal issue for consideration is the potential effect of such a change on the amenity of adjoining residents.

Policy D1 of the Local Plan seeks to ensure, amongst other things, that development does not adversely affect '*the amenity of occupiers of adjoining residential properties*'

and to *'mitigate potential adverse impacts, such as noise.....from developments, both during and after construction'*.

Policy EN14 of the Plan deals directly with the control of polluting effects, including noise. In this respect it states, *'Permission will not be granted for development that would result in unacceptable levels, either to residents or the wider environment of:...noise and/or vibration.'*

National policy relating to noise impact is set out primarily under para. 123 of the National Planning Policy Framework (the Framework). This states that, *'Planning policies and decisions should aim to: avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development'*

Further guidance on the consideration of noise is given in the National Planning Practice Guidance (the Guidance). This confirms when noise is a relevant planning consideration, that it should be considered alongside the economic, social and environmental dimensions of the development. It also sets out a hierarchy of noise exposure to allow the impact to be considered against alongside other relevant factors.

The nearest residential property and the one most likely to be affected by the proposal is 'The Retreat' which adjoins the site to the southwest side. The delivery yard area and loading bay serving the store lie directly adjacent to the boundary with The Retreat, and within approximately 13 metres of the northeast corner of that property. The boundary with this property is already marked by timber fencing designed to provide an acoustic barrier to the adjoining property.

The application has been accompanied by an Environmental Noise Assessment Report that has been prepared, on the applicant's behalf, by Sharps Redmore Acoustic Consultants. The report includes details of a noise survey carried out at the site to determine background noise levels; an assessment of noise from delivery operations against the background noise environment, and; proposed delivery noise reduction measures. These reduction measures include specific instructions to store workers and delivery drivers aimed at reducing noise associated with deliveries. The report suggests that peak noise levels between 06.00 and 07.00 would be slightly higher than World Health Organisation (WHO) guidelines but taking into account background noise levels the significance of the impact would be low and that overall the proposal would not give rise to any significant adverse impact. The report concludes that the extension to the delivery hours would not result in significant adverse impact to neighbouring residents, and that this being the test set out under para. 123 of the NPPF the proposal should be granted.

The Council's Environmental Health (EH) team have considered the submitted noise report and are familiar with the site's history. They have advised that whilst they have received no formal complaints from the owners of the Retreat (and former owners of the Aldi site) they have previously been informed that the noise from pallet loaders within the lorries was loud and disturbing causing their dogs to bark.

The EH team in considering the proposal have referred to previous noise assessments submitted in relation to the 2015 application as well as that submitted with the current application. They point to differences between the reports of predicted delivery noise

levels with the more recent report, indicating a reduction in delivery noise levels of 4.8 dB.

Whilst the earlier 2015 report is considered to have provided a more detailed breakdown of delivery noise impacts neither of the reports are based on actual monitoring of delivery noise at this site. In addition there are concerns that the method of calculating noise levels within the report fails to properly account for the “peaky nature” of delivery noise. Based on their analysis of both reports, they conclude that noise from deliveries could affect sleep/amenity and that as such the additional early hours (06.00 to 07.00) and late evening (20.00 to 22.00) deliveries could cause harm.

The discrepancies identified between the findings of the two reports indicate a lack of certainty over the actual impacts of delivery noise. However, they do indicate that if the earlier noise report findings were to be applied they would represent a significant increase in peak noise levels. Applying this to the noise exposure hierarchy summarised in the planning practice guidance (and based on The Noise Policy Statement for England) this could result in a ‘Noticeable and disruptive’ perception which should be avoided.

The concerns raised have been discussed with the applicant’s agent who appear to recognise the need for/benefits of site specific testing of delivery noise impacts at the adjoining property and for these to be carried out in conjunction with Environmental Health Officers. Unfortunately that property is currently for sale and as such this is not currently possible. Whilst a temporary consent has been suggested this is not considered to be appropriate given the potential significant affects identified. It has been suggested to the applicant that the current application is withdrawn until such time as site specific noise testing can be carried out from the neighbouring property. They have however asked for the application to be determined as it stands.

Planning Practice Guidance advises that noise impacts should not be considered in isolation from other planning considerations including economic and social dimensions of sustainable development. The supporting statement suggests that the extended delivery hours would benefit customers by allowing greater operational flexibility for receiving deliveries and restocking shelves and would enable deliveries to avoid peak traffic in the Honiton Area. However these ‘benefits’ are not considered to outweigh the concerns in relation to the potential adverse impact on the amenity of neighbouring occupiers resulting from the extended delivery times, particularly as the store has operated successfully with its current hours restrictions, and as such the application is considered to be unacceptable and is recommended for refusal.

Conclusion

The application seeks to extend the hours of delivery to 6am extending until 10pm.

Whilst a noise report has been submitted with the application to demonstrate that the additional hours will not impact upon the adjoining resident occupier, Environmental Health have objected to the application as there are inconsistencies with previous noise reports, as they have concerns with the findings, and as they believe that an assessment is required based upon actual (rather than predicted) delivery noise levels at the site.

As the applicant cannot gather the readings at present as the adjoining property is for sale, the application needs to be determined on the basis of the current information and due to concerns regarding the impact upon the amenity of the adjoining residents, the application is recommended for refusal on the basis of the submission of insufficient information.

RECOMMENDATION

REFUSE for the following reasons:

1. Insufficient evidence has been submitted to demonstrate that the extension to the delivery hours proposed would not result in significant adverse harm to the amenity of existing/future occupiers of the adjoining residential property known as 'The Retreat', as such the proposal is contrary to the requirements of policies D1 (Design and Local Distinctiveness) and EN14 (Control of Pollution) of the East Devon Local Plan 2013 - 2031 and national planning policy guidance set out in the National Planning Policy Framework and accompanying Planning Practice Guidance.

NOTE FOR APPLICANT

Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked proactively and positively with the applicant to attempt to resolve the planning concerns the Council has with the application. However, the applicant was unable to satisfy the key policy tests in the submission and as such the application has been refused.

Plans relating to this application:

5872 P(1)17	Location Plan	24.10.17
5872 P(1)14	Proposed Site Plan	24.10.17

List of Background Papers

Application file, consultations and policy documents referred to in the report.

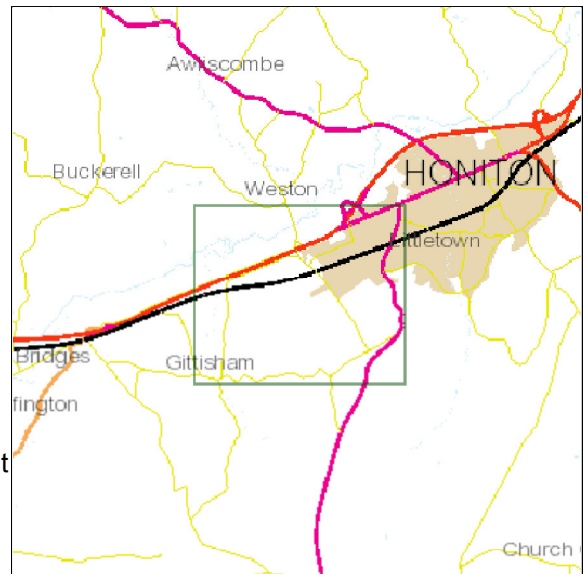
Ward Feniton & Buckerell

Reference 18/0359/V106

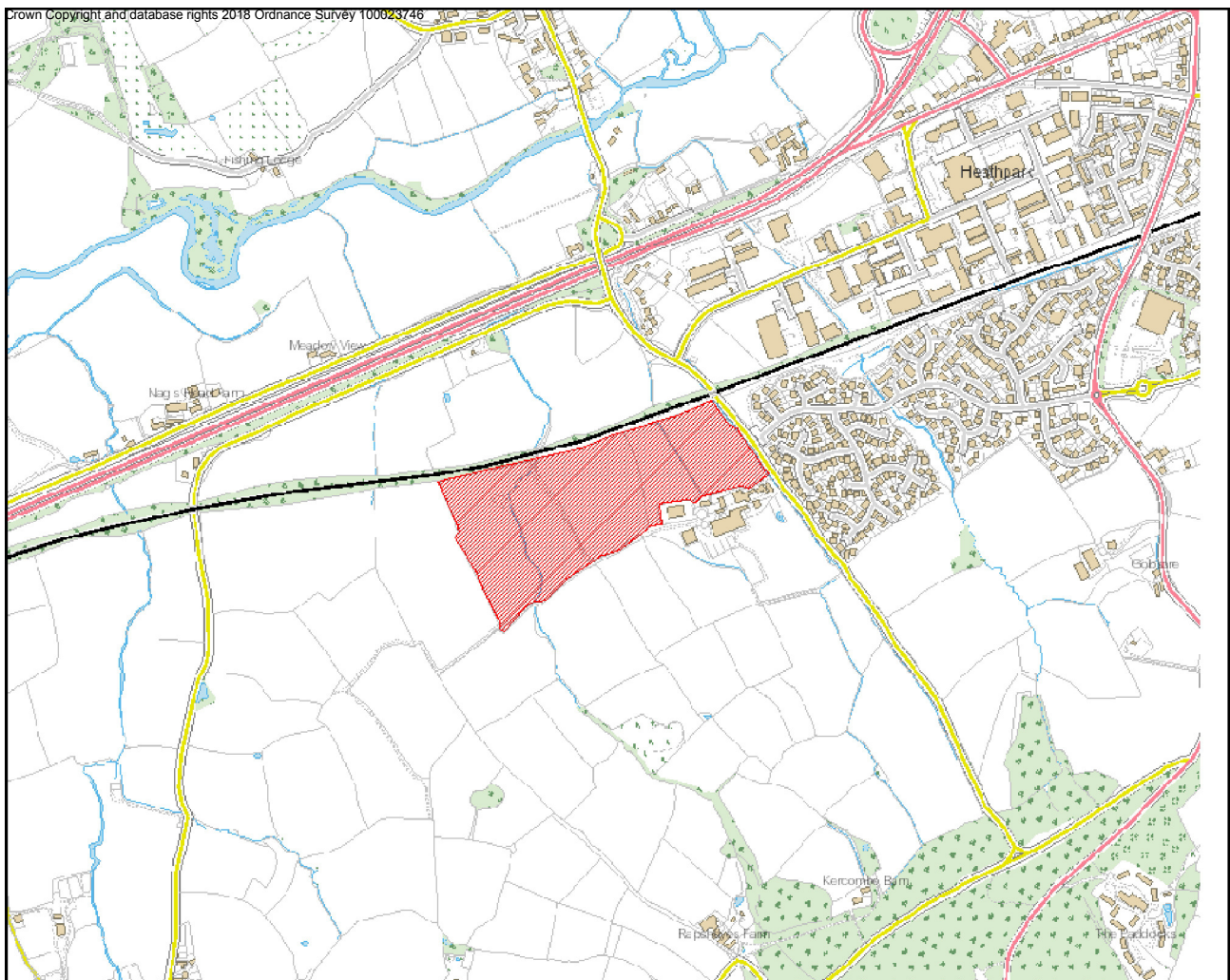
Applicant Mr G Hutton

Location Land Adjacent Hayne Farm Hayne Lane Gittisham

Proposal Variation of requirement for affordable housing and other obligations in Section 106 Agreement pursuant to application 13/2744/MOUT;



RECOMMENDATION: To amend the obligations within the Section 106 agreement



		Committee Date: 6th March 2018
Woodbury And Lympstone (WOODBURY)	18/0359/V106	Target Date:
Applicant:	Baker Estates	
Location:	Land West of Hayne Lane, Honiton	
Proposal:	Variation of requirement for affordable housing and other obligations in Section 106 Agreement pursuant to application 13/2744/MOUT	

RECOMMENDATION: Amend the obligations within the Section 106 agreement as detailed in the report.

EXECUTIVE SUMMARY

This application is before Members of the Development Management Committee as it proposes to vary an existing Section 106 Agreement contrary to adopted Local Plan Policy.

Outline planning permission was granted on the site in February 2015 (ref 13/2744/MOUT) for the construction of up to 300 dwellings. The outline planning permission was granted subject to a legal agreement that secured contributions towards education, open space, highway improvements and the provision of 40% on-site affordable housing.

This application seeks to vary the terms of the legal agreement through the reduction of the open space contribution and changes to the affordable housing provision to provide a reduced percentage, different tenure mix, coupled with a financial contribution.

The applicant believes that if they were to submit a new outline application, they would be able to successfully argue a need for only 25% affordable housing. In order to avoid this situation they have proposed an offer below that secured in the legal agreement but in excess of 25%.

Whilst the case put forward by the applicant justifying 25% affordable housing is understood, it is mainly based upon an argument of fairness and comparison rather than strict planning policy. As such, it is considered that the applicant's

chances of success on appeal arguing 25% affordable housing are approximately 50%.

However, this also means that there is a 50% chance that the Council could lose any appeal.

In light of this, and given that the applicant is offering in excess of 30% affordable housing along with a financial contribution of £500,000, with an improved mix of housing compared to that already consented on the site, it is considered that on balance the amended obligations should be accepted.

It is not considered that agreement to the variation of this legal agreement will undermine any other sites or set an undesirable precedent as the circumstances surrounding this site are unique and do not apply to any other sites in the District.

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 1 (Spatial Strategy for Development in East Devon)

Strategy 2 (Scale and Distribution of Residential Development)

Strategy 3 (Sustainable Development)

Strategy 5 (Environment)

Strategy 6 (Development within Built-up Area Boundaries)

Strategy 27 (Development at the Small Towns and Larger Villages)

Strategy 34 (District Wide Affordable Housing Provision Targets)

Strategy 50 (Infrastructure Delivery)

H2 (Range and Mix of New Housing Development)

Government Planning Documents

NPPF (National Planning Policy Framework 2012)

National Planning Practice Guidance

Site Location and Description

The site lies outside the built up area boundary within the open countryside to the west of Honiton. It currently comprises a number of agricultural fields surrounded by mature hedgerows and trees extending to 11.95 hectares but with residential development having commenced construction to the eastern boundary.

To the north of the site lies the main line railway, the fields slope down towards the railway which lies behind embankments. To the east of the site is Hayne Lane beyond which lies an established residential housing estate (this marks the start of the built up area boundary of Honiton). To the south of the site at its western end lies a farmhouse and associated agricultural buildings known as 'Hayne Farm' and to the south at its eastern end is open countryside. To the east there is further open countryside. There is currently very limited access to the fields being in agricultural use.

Planning History

Outline planning permission was granted in 2015 (ref 13/2744/MOUT) for the construction of up to 300 dwellings. As part of this consent the following obligations were secured by legal agreement:

- 40% affordable housing at a 70/30 tenure split (rented/intermediate);
- £852,000 education contribution;
- £488,000 open space contribution;
- Off-site highway works;
- On-site open space, play equipment and allotments;
- Contributions index linked to the date of permission

A Reserved Matters application for 85 of the dwellings (currently commenced on site) was granted in 2017 (ref 17/0942/MRES) with a second reserved matters for 240 units (17/2690/MRES) currently under consideration.

Proposal

The applicant is requesting that the S106 agreement be amended to the following:

- On-site affordable housing provision of 30% or 90 affordable dwellings, whichever is the greater;
- The on-site affordable dwellings will be provided within a tenure split of 50% rented and 50% intermediate;
- Improved mix of units submitted through a further reserved matters application proposing 25% 1-bed flats, 43% 2-bed flats, 17% 2 bed houses and 15% 3-bed houses;
- A financial contribution of £500,000 towards off-site affordable housing;
- A financial contribution of £210,000 towards sports facilities;
- Unchanged education contribution of £852,000;
- Unchanged on-site open space, play equipment and allotments;
- Off-site highway works (now excluding a financial contribution of £150,000 to the completed Turks Head roundabout);
- Minor changes to the mortgagee in possession clause;
- Deletion of the restriction preventing stair casing to 100% for the affordable units;
- Changes to allow the open space to occur in step with a phased build;
- All contributions index-linked to the date of the new agreement.

ANALYSIS

Background:

The original outline application was approved in 2015 at a time when the Council could not demonstrate a 5-year supply of housing land and when 40% affordable housing provision was being secured across the District.

The adopted Local Plan, that post-dates the outline consent, did not include the site within the Built-Up Area Boundary (BUAB) for Honiton. As such, and despite the site benefitting from outline consent for 300 dwellings, the site falls outside of the BUAB for Honiton and is therefore within the countryside.

Local Plan Strategy 34 states that sites that fall within the BUAB of Honiton are subject to the provision of 25% affordable housing, whilst sites (such as the application site) that fall outside of it are subject to the provision of 50% affordable housing.

Key Issues:

The main issues to consider in determining this application are whether the proposed revised Heads of Terms/changes to the S.106 obligations are acceptable.

Summary of applicant's case

In order to be able to assess the acceptability of the revised obligations, there needs to be an understanding of the reasons that the applicant has made the request to amend the agreement.

In summary, the applicant has put forward the following 4 reasons:

- That reading the local plan as a whole it is clear that the site should now attract 25% affordable housing;
- The site should be treated as being within the BUAB as it accords with the purpose of the policy for built-up area boundaries as they determine areas and locations that are suitable for development. As the site benefits from planning permission for 300 dwellings, it is obviously suitable for development and it is illogical to treat it as countryside;
- 25% affordable housing provision for the site accords with the Council approach to CIL that treats the site as being within Honiton and not within the countryside;
- The built-up area boundaries on the proposals map are out of date and should be updated to reflect the consent on the site. Other sites benefitting from consent were included within the BUAB's for other settlements, and as part of the Villages Plan.

The applicant has advised that they have 4 legal opinions supporting their case, and have submitted the Summary of Case from Richard Ground QC. However, without

having sight of all 4 full opinions, and without also seeing the instructions behind the opinions, it is difficult to give full weight to them.

The Summary of Case from Richard Ground QC does not detail the applicant's chances of success on appeal. The first paragraph stating that 'I have been asked to summarise the case for requiring 25% affordable housing in a new planning application for the site.' This therefore summarises a case that could be made rather than going into any detail on the chances of success or flaws in the arguments.

The applicant has advised that if the Local Planning Authority do not support their current proposal, they will have to consider the submission of a further application on the site proposing 25% affordable housing. On the basis that this is unlikely to be supported, they would appeal that decision.

Assessment of applicant's case

Whilst the points raised by the applicant are understood, any Inspector assessing an application for 25% affordable housing on the site would use the adopted Local Plan policy as the starting point. As stated above the Local Plan shows the site sitting outside of the BUAB and as such the site is within the countryside where 50% affordable housing applies.

In the absence of any viability information from the applicant to demonstrate that the current provision of 40% affordable housing is unviable, and given the high need for affordable housing in Honiton (bearing in mind the lack of affordable housing provided in Honiton over the last few years) and across the district, it is possible that an Inspector could conclude that the site should be subject to the 50% affordable housing provision and not 25% affordable housing. It is however likely that the viability profile of the site would more closely reflect that of sites within the BUAB than those outside and so 50% affordable housing may not be viable although this is not something that the applicant is arguing at the present time.

An Inspector may not concern themselves with any conflict with CIL, as this sits outside of planning policy, or the reasons why the site was not included within the BUAB for Honiton in the new Local Plan. For these reasons there is a reasonable chance that an Inspector could dismiss a proposal for 25% affordable housing provision. However, there is equally the possibility that an Inspector could determine that there is merit to the applicants case and allow an appeal.

In order to avoid the need for a new outline application and appeal, the applicant is proposing to amend the legal agreement to provide more than 25% affordable housing. The offer being proposed is 30% or 90 affordable units (whichever is the greater), plus a financial contribution of £500,000. In addition, the applicant is proposing an improved mix of units through a new reserved matters application for 291 units (which at 90 affordable units represents 31% affordable housing provision). The £500,000 contribution would enable the council to buy approximately 4 houses on the open market (used in relation with right to buy receipts that would reduce pressure on the spending of right to buy receipts). Alternatively the money could be used to increase affordable housing provision on other sites. Again by approximately 4 units.

However, in order to make this viable, the applicant is proposing a 50/50 tenure split and reduced contribution towards sports pitches (£488,000 down to £210,000). The £210,000 figure reflecting the part of the original £488,000 contribution that relates to sports pitch provision. The remaining £278,000 was a contribution towards wider open space for which that applicant argues there is provision on-site. The education contributions remains unchanged.

With regard to the affordable housing offer, obviously 31% provision is much better than 25% and Housing have confirmed that the revised housing split is much improved and better than the consent mix, even though the mix consented at reserved matters stage is considered acceptable. The improved split does however come at the expense of the changed tenure split with Housing preferring a 70/30 split and greater reliance on rented units for which there is evidence of high demand. As such, the improvement in the mix of units is off-set by worsened tenure split.

With regard to the reduced open space contribution, this is considered to be acceptable on the basis that there is on-site open space, play space and allotments provided, plus the contribution adequately mitigates the need for improve sports pitches as a result of the development for which a shortage in identified in Honiton within the Playing Pitch Strategy.

For clarity, the applicant is asking for their offer to be agreed without the provision of overage. This is on the basis that they believe that a 25% affordable housing scheme is policy compliant and that therefore overage should not apply. In addition, the applicant is not running a viability argument or submitted viability information and as such an overage clause could not be drawn up or added to any amended legal agreement.

CONCLUSION

The table below details the current obligations, an original offer from Baker Estates, response to that offer from the Members Advisory Panel, and the current offer:

Current S.106 Obligations	Baker Estates offer	MAP requirement	Latest offer
£852,000 Education Contribution	£852,000 Education Contribution	£852,000 Education Contribution	£852,000 Education Contribution
£488,000 POS Contribution	£50,000 POS Contribution plus LEAP and other open space on-site	£210,000 Sports pitch contribution plus onsite play space and open space	£250,000 Sports pitch contribution plus onsite play space and open space
40% Affordable Housing (mix to be agreed)	30% Affordable Housing including Rentplus (mix unclear)	30% Affordable Housing excluding Rentplus and comprising 40% 1 bed flats, 40% 2 bed (comprising 5% flats and	30% affordable housing (no Rentplus) comprising 25% 1-bed, 60% 2-bed, 15% 3-bed. Plus £500,000

		35% houses), 15% 3 bed houses and 5% four bed houses. Plus £961,250 off-site Affordable Housing contribution	contribution towards off-site affordable housing
70:30 Tenure Split	50/50 Tenure Split	70/30 Tenure Split	50/50 Tenure Split
Off-site highway works	Off-site highway works	Off-site highways work (now excluding contribution towards Turks Head roundabout	Off-site highway works
	£250,000 towards healthcare (Admiral Nurses)	Contribution to be justified and at a scale (likely to be substantially lower than £250,000) to mitigate the impact from the development and paid towards capital expenditure	
	£100,000 towards Gittisham CLT or other affordable housing in Gittisham	Not justified in planning terms	
	1,000sqm community building on the site	Not justified in planning terms	
Index linked to date of original permission	Index linked to date of new agreement	Index linked to date of original permission.	Index linked to date of original permission.

Members will note the removal of suggested obligations towards Admiral Nurses, CLT and community building that were not justified in planning terms.

In addition to the main changes, the applicant is seeking a couple of changes to clauses in the agreement regarding mortgagee in possession and stair casing that will only be accepted by Housing if evidenced. The applicant has provided evidence that the removal of these clauses will aid a registered provider, and also provided evidence that a registered provider is happy with the 50/50 tenure split and revised mix of housing.

The applicant is however asking that the contributions be index linked to the date of the new agreement rather than the original and this is not considered to be acceptable for the education contribution and sports pitch contribution as these calculations were originally based upon 2015 figures. If it is determined that the agreement be amended, it is recommended that the index linking of the education and sport pitch contribution remain index linked to the original agreement date to ensure no loss of value.

The key issue here is whether or not Members are sufficiently confident that the Council could win an appeal on this issue and that even if we did so that the applicant would not come back and successfully argue viability and successfully reduce the obligations down to the currently proposed level or lower. On balance, it is considered that the applicant's offer be accepted (subject to the index linking change mentioned above). This is on the basis that the offer is in excess of the 25% affordable housing level that the applicant may have success with on appeal, and on the basis that the slightly worse tenure split is off-set by the improved mix of affordable units. Agreement to the change of the legal agreement would also negate the need for a potentially lengthy and costly appeal and enable the development to proceed on site as quickly as possible.

The recommendation is however very finely balanced as only an appeal would we be able to determine whether the applicants case that the site should be subject to 25% affordable housing is sound.

RECOMMENDATION

Amend the S.106 Agreement to secure the following changes:

- Provision of 30% or 90 (whichever is the greater) affordable housing units on-site;
- 50/50 tenure split (intermediate and rented);
- Affordable Housing units to consist of 25% 1-bed flats; 43% 2-bed flats; 17% 2-bed houses and 17% 3-bed houses;
- £500,000 off-site affordable housing contribution for use across the district;
- £210,000 sports pitch contribution;
- £852,000 education contribution;
- Removal of mortgagee in possession clause;
- Deletion of stair casing restriction;
- Open space to be provided in step with each phase of development.
- Education and Sports Pitch contributions index linked back to the date of the original legal agreement.

List of Background Papers

Application file, consultations and policy documents referred to in the report.